737

SUPREME COURT OF THE UNITED STATES.

No. ~~38~~ 55.

JOSEPH MANDEVILLE ET AL., APPELLANTS,

VERSUS

WILLIAM NEALE, ADMINISTRATOR OF FRANCIS KEENE, COMPLAINANT.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE COUNTY OF ALEXANDRIA, D. C.

INDEX.

	Original.	Print.
Title—Subpœna	1	2
Return	2	3
Alias subpœna and return	3	3
Bill taken for confessed, and set for decree	3	4
Answer of Joseph Mandeville	4	4
Answer of Samuel B. Larmour	7	6
Order of publication	8	7
Answer of John A. Stewart	9	7
Answer of George Coleman	10	8
Decree for sale by trustees &c.	11	8
Answer of Daniel Somers	13	9
" John Jackson	14	10
" James H. Dulany	15	11
" J. R. Riddle	17	12
" Getty & Cookendorfer	18	12
" Richard Wood	20	13
" A Moore	20	14
" Thomas Mount	21	15
" R. N. Windsor	(see 49) 22	15
" Thomas Semmes	22	16
" Paton's administrator	23	16
" Hugh Carolin	24	17
Order for trustees to state an account	25	17
Amended answer of George Coleman	25	18
Commissioner Auld's report	27	18

Bill taken for confessed, &c.	28	19
Decree for sale by trustees, &c.	29	20
Answer of John Corse	30	20
Answer of James S. Scott	33	22
Trustees' first report	35	23
" second do.	37	27
Answer of John Cohagan	41	29
" Robert Hall	42	30
" B. Baden	44	31
" Peter Heiskell	45	32
" James Bloxham	46	33
Final decree	47	33
Certificate and seal	50	34

DISTRICT OF COLUMBIA, } *sct.*
County of Alexandria, }

Pleas before the honorable the judges of the United States' circuit court of the District of Columbia, for the county of Alexandria, the 5th day of December, A. D. 1827.

WILLIAM NEALE, administrator of FRANCIS KEENE, complainant, *against* THOMAS SWANN, COLIN AULD, and EDMUND I. LEE, assignees of the late Merchants' Bank of Alexandria, and JOHN ANDERSON and others, stockholders in said bank, defendants. } *In Chancery.*

Be it remembered, that, heretofore, to wit, on the 22d day of November, 1817, came Francis Keene, aforesaid, by Thomson F. Mason, his attorney, and sued out of the office of the clerk of the said court, the following subpœna in chancery against the persons therein named.

DISTRICT OF COLUMBIA, *to wit:*

[L. S.] The United States of America to the marshal of the District of Columbia, greeting:

You are hereby commanded to summon Thomas Swann, Colin Auld, and Edmund I. Lee, assignees of the late Merchants' Bank of Alexandria, and John Anderson, James Anderson, Daniel Annin, Samuel Beall, William H. H. Boswell, Edmund Brooke, Benjamin Baden, Thomas K. Beale, James Bloxham, George Bruce, junior, Richard Wood, Thomas Cookendorfer, Hugh Carolin, Daniel Cawood, Samuel Chester, John Corse and Nathaniel Rounsavell, trading under the firm of Corse and Rounsavell, George Coleman, John Cohagan, James H. Dulany, Camillus

Subpœna.

Griffith, Nimrod Farrow, Robert Getty, Peter Heiskell, J. Hagerty, junior, Robert Hall, John Jackson, Alexander Kyle, John McPherson and Daniel McPherson, late joint merchants and copartners under the firm of John McPherson and Son, Daniel McPherson, Charles Moxley, Alexander Moore, Thomas Mount, James R. Riddle, administrator of Ferdinand Marsteller, Joseph Mandeville, Joseph Mandeville and Samuel B. Larmour, joint merchants and copartners under the firm of Mandeville and Larmour, Robert Mandeville and James Mandeville, joint merchants and copartners under the firm of Robert and James Mandeville, William N. Mills, Robert A. Mills, Thomas Pickerill, Craven T. Peyton, Noblet Herbert, administrator of William Paton, junior, deceased, Thomas Neill, Thomas Olive, James R. Riddle, Nathaniel Rounsavell, Thomas Rigdon, Peter Saunders, Daniel Somers, James S. Scott, John A. Stewart, William Smith, Thomas Semmes, Thompson Simpson, Evan P. Taylor, William A. Linton, executor of William Tyler, Ambrose Vasse, Robert N. Windsor, Robert Young, Cave Withers, Richard Wells, the Mechanics' Bank of Alexandria, the Bank of Washington, Bank of Metropolis, the Patriotic Bank, Central Bank of Georgetown and Washington, Franklin Bank of Baltimore, the Bank of Chambersburg, Bank of Waterford, the Bank of Winchester, to appear before the honorable the judges of the circuit court of the District of Columbia, for the county of Alexandria, at the court-house in said county, at the next court, to answer a bill in chancery exhibited against them by Francis Keene; and this they shall in no wise omit, under the penalty of $333 33 cents: and have then there this writ. Witness the honorable William Cranch, chief judge of the said court, this twenty-second day of November, 1817.

G. DENEALE, *C. C.*

Return.

Upon which subpœna, the marshal made the following return: Executed on Thomas Swann, Colin Auld, Edmund I. Lee, James Anderson, Benjamin Baden, Thomas K. Beale, James Bloxham, George Bruce, junior, Richard Wood, Hugh Carolin, Daniel Cawood, John Corse, Nathaniel Rounsavell, George Coleman, John Cohagan, Camillus Griffith, Robert Hall, John Jackson, Daniel McPherson, Alexander Moore, Thomas Mount, James R. Riddle, Joseph Mandeville, Samuel B. Larmour, Robert Mandeville, James Mandeville, William N. Mills, Robert A. Mills, Craven T. Peyton, Noblet Herbert, Peter Saunders, Daniel Somers, James S. Scott, John A. Stewart, Thomas Semmes, Evan P. Taylor, Ambrose Vasse, Robert N. Windsor, Robert Young, and Cave Withers: the other defendants not found.

JOHN C. MANDELL, *D. M.*
For W. BOYD.

Alias subpœna.

And at the rules held in the clerk's office of the said court for the month of December, 1817, an alias subpœna was awarded against those defendants as to whom the marshal had returned the above subpœna not executed; upon which alias subpœna the marshal made the following return:

"Not found, and non-residents in the county of Alexandria.

D. MINOR, *D. M.*
For T. RINGGOLD, *Marshal.*"

Bill filed.

And at another day, to wit, at the rules held in the clerk's office of the said court for the month of July, 1818, (until which time this cause had been regularly continued,) came the complainant, by Thomson F Mason, esq. his solicitor, and filed there a certain bill against said defendants, and the cause is continued. [No bill appears among the papers in this cause.]

Bill taken for confessed, and set for decree.

At another day, to wit, at the rules held in the clerk's office of the said court for the month of November, 1818, came the complainant, by his solicitor, and it is ordered that the bill be taken for confessed, and set for decree as to those defendants on whom process has been served, and continued at the rules as to the other defendants.

At another day, to wit, at an United States' circuit court of the District of Columbia, continued and held for the county of Alexandria, the 17th day of December, 1818, came the defendants, Mandeville and Larmour, by Thomas Swann, their solicitor, and filed their answers, which are in the words and figures following, to wit:

Answer of Joseph Mandeville.

The answer of Joseph Mandeville to a bill of complaint filed in the honorable court of chancery for the District of Columbia, and county of Alexandria, by Romulus Riggs, against him and others, as stockholders in the late Merchants' Bank of Alexandria.

This defendant, reserving the benefit of exception to the imperfections and untruths in the said bill contained, in answer thereto, or to so much thereof as he is advised it is material to answer unto, saith—That he hath not, for a long time, owned any stock in said bank That he doth not believe the complainant possessed any of the notes of that bank now claimed upon, while this defendant was a stockholder therein That he has not, for a long time past, seen a list of stockholders, and does not recollect as such any others besides those so named in complainant's bill, nor does he know or believe that all those therein charged as stockholders were so. This defendant did, for himself, subscribe as a stockholder in said bank, but never was really a stockholder therein in copartnery with Samuel B. Larmour, although he may have so appeared. After the bank had been some time in operation, this defendant obtained a discount upon a stock note, and, having no occasion to keep a cash account with the bank, he desired the amount to be placed at the credit of Mandeville and Larmour, who had a cash account with the bank. This, he found, could not be done but by his drawing, in all such cases, checks in favor of Mandeville and Larmour—thus opening a cash account for himself. Considering the liability to mistakes that would be created by keeping a cash account for him, and another for Mandeville and Larmour,—also the keeping of two bank books, rendering errors almost unavoidable,—and not foreseeing any ill consequence of the act, this defendant did, hastily and incorrectly, make a nominal transfer in bank of his stock to Mandeville and Larmour, and substituted a stock note in their name for his own note, which had been discounted, and the proceeds were entered in their account At the moment, he consulted convenience alone; and, so little did he apprehend trouble to another from the act, that he neither spoke of it to Samuel B. Larmour, nor ever mentioned it further. Samuel

B. Larmour never had any interest in said stock; and this defendant, so far as his means may extend, ought and must make reparation to Samuel B. Larmour for any injury that he may sustain by this defendant's inconsiderate and imprudent conduct in this matter.

The complainant never exhibited to this defendant any of the notes mentioned in his bill, nor has defendant ever seen one of them. He knows not if they be genuine notes, or that payment was ever demanded of the bank for any of them. But he has reason to believe that the greatest part, if not the whole, if genuine, have been acquired by the complainant, and for very trifling considerations, since the failure of the bank, and since this defendant ceased to be a stockholder; for, when the complainant instituted suits at law against this defendant and others, as stockholders therein, at November term, 1816, he then, as appears by his affidavit of the 3d December, 1816, filed in said suits, claimed only the amount of $8,647 75: this was several months after the bank stopped. He was reported to have purchased that paper after the said stoppage, at a very large discount. Since the dismissal of his said suits, he has been known to declare that he would recover every cent from the stockholders for all the notes he held. If he has possession of the amount he now claims, then he must have purchased the greatest part of it since the third of December, 1816, (this defendant being then not a stockholder,) and most probably so very low as 10 per cent. of its nominal value, or less than that, upon the speculative chance of gaining ninety dollars for every ten he advanced. The complainant states that the notes he claims upon came regularly into his possession. It may be so; for the complainant is well known as a very regular and very extensive jobber in paper securities, at depreciated prices—thus making great profits upon the absolute losses of others by whose misfortunes his business flourishes. In the subject of this suit the complainant has acted with the most artful address. By advertisements to the public, he has decried these notes as of no value, while he has been earnestly engaged in buying them up for very trifling considerations, intending to realize their full nominal value upon the private property of those innocent stockholders whose interests have been most basely betrayed by three or four dishonest agents, and who have never received any consideration for great part of all the notes claimed by this and other suitors. In pursuit of this object, the complainant has resorted to a court of equity. This defendant trusts the complainant will, in that court, learn that equity will award to him nothing more from the bank, or from those injured stockholders, than the amount he has actually paid for the notes he claims upon, with legal interest thereon. This defendant prays the court to direct that the complainant do make due proof that each of the notes claimed by him be genuine; that they were issued while this defendant was a stockholder; that payment of them was demanded of the bank; that he is the real holder of the said notes; at what times he became possessed of them, and from whom he purchased them, and what value he did actually pay for each note of them—that the complainant may have justice in equity, and no more. These proofs are most necessary on the part of all claimants upon said bank, as it was reported that many notes. since the bank failed, and before the trustees were put in possession, were misused; by whom, this defendant knows not, nor does he mean to say that every claimant stands on the same footing as to value given for the notes of the bank.

The complainant having filed a copy of the articles of association of said

bank, this defendant referring thereto, doth insist upon the 15th article as binding all persons who dealt with the bank to rely upon the funds of the institution alone for payment of the notes issued.

This defendant is not required to notice the deed of assignment, but he prays *to* leave to say that he does not consider the parties who executed it as competent to convey; that he, if interested, would never have consented to prefer one fair claim on the bank to another; yet he doth believe the said assignment to have been the means of placing the remaining affairs of the bank in safe and competent hands, thereby rescuing some part of the property from the desperate situation that it previously stood in.

This defendant prays that this may be taken as his answer to all the suits in this court regarding said bank, wherein he is made a defendant. He denies all combination, and prays to be hence dismissed, with his costs, &c.

DISTRICT OF COLUMBIA, } *to wit:*
County of Alexandria, }

Joseph Mandeville this day made oath, according to law, before the subscriber, a justice of the peace for the county aforesaid, that the matters and things in the foregoing answer set forth as of his own knowledge are true, and the rest he believes to be true. Given under my hand, this ninth day of December, 1818.

ADAM LYNN.

Answer of Saml. B. Larmour.

The answer of Samuel B. Larmour to a bill of complaint filed in the honorable the chancery court for the District and county of Alexandria, by Romulus Riggs, against him and others, as stockholders in the late Merchants' Bank of Alexandria.

This defendant, reserving to himself the benefit of exception to the many imperfections and untruths in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material to answer unto, saith—That he never intended to subscribe as a stockholder in said bank. That he never knew, nor ever had any idea, that his name was used as a stockholder therein, until some time after the bank stopped payment; and if his name does appear as a joint stockholder with Joseph Mandeville, it was entirely without his consent or knowledge; and he doth disclaim all interest in the said bank.

This defendant prays this, his answer, to be taken as such in any and all suits in this court respecting the Merchants' Bank, wherein he is charged as a party concerned. He denies all combination, and prays to be hence dismissed, with his reasonable costs in this behalf expended.

DISTRICT OF COLUMBIA, } *to wit:*
County of Alexandria, }

Samuel B. Larmour this day made oath, according to law, before the subscriber, a justice of the peace for the county aforesaid, that the matters and things in the foregoing answer set forth are true. Given under my hand this day of December, 1818.

ADAM LYNN.

And at a court continued and held for the District and county aforesaid,

Order of publication.

the nineteenth day of December, 1818, came the complainant by his solicitor; and the defendants, John Anderson, Daniel Annin, Samuel Beall, Edmund Brooke, Thomas Cookendorfer, Daniel Chester, James H. Dulany, Nimrod Farrow, Robert Getty, Peter Heiskell, J. Hagerty, junior, Alexander Kyle, John McPherson, Charles Moxley, Thomas Pickerille, Thomas Neill, Thomas Olive, Thomas Rigdon, William Smith, Thompson Simpson, William A. Linton, Richard Wells, the President and Directors of the Franklin Bank of Baltimore, the President and Directors of the Bank of Chambersburg, the President and Directors of the Bank of Waterford, and the President and Directors of the Bank of Winchester, not having entered their appearance and given security, according to the statute and the rules of this court; and it appearing to the satisfaction of the court, upon affidavit, that the said defendants, John Anderson, Daniel Annin, Samuel Beall, Edmund Brooke, Thomas Cookendorfer, Daniel Chester, James H. Dulany, Nimrod Farrow, Robert Getty, Peter Heiskell, J. Hagerty, junior, Alexander Kyle, John McPherson, Charles Moxley, Thomas Pickerille, Thomas Neill, Thomas Olive, Thomas Rigdon, William Smith, Thompson Simpson, William A. Linton, Richard Wells, the President and Directors of the Franklin Bank of Baltimore, the President and Directors of the Bank of Chambersburg, the President and Directors of the Bank of Waterford, and the President and Directors of the Bank of Winchester, are not inhabitants of this district; on motion of the said complainant, by his counsel, it is ordered that the said absent defendants do appear here on the first day of next term, and enter their appearance to this suit, and give security for performing the decrees of the court; and that a copy of this order be forthwith published, for two months successively, in one of the public newspapers published in this county, and that another copy be posted at the front door of the court-house of said county.

And the defendants, John A. Stewart, William N. Mills, and George Coleman, appeared by their solicitor, and filed their answers; and the order taking the bill for confessed, as to these defendants, is set aside; which said answers are in the words and figures following:

Answer of John A. Stewart.

The separate answer of John A. Stewart to the bill of complaint exhibited against him and others by Romulus Riggs, on the chancery side of the circuit court of the District of Columbia, for the county of Alexandria.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of exception to the many uncertainties, imperfections, and untruths, in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material for him to answer unto, he answereth and saith—That he is not, nor never was, a stockholder or partner in the late bank called the Merchant's Bank of Alexandria, mentioned in the complainant's bill. He never subscribed, or authorized any person to subscribe, for shares in the said bank in his name. This defendant admits he hath been informed that his name appears on the subscription book of the stock of the said bank, as a subscriber, by one Camillus Griffith, but this defendant denies the authority of the said Camillus Griffith to subscribe for him. This defendant never did any act ratifying the act of the said Camillus Griffith, by voting for directors of the said bank, or receiving dividends from it, nor has ever asked or received a discount from the said bank, or kept any account with the said bank. This defendant annexes the certificate of Camillus

Griffith as a part of this answer This defendant denies all combination, &c. and prays hence to be dismissed, with his reasonable costs, &c.

SWANN, *for the Def't.*

ALEXANDRIA COUNTY, *sct.*

The above named John A. Stewart appeared before me, the subscriber, a justice of the peace for the county aforesaid, and made oath that the preceding answer, signed by him, contains the truth. Given under my hand, 19th day of December, 1818.

NEWTON KEENE.

The answer of Mills cannot be found among the papers.

Answer of George Coleman.

The separate answer of George Coleman to the bill of complaint exhibited by Romulus Riggs, against him and others, in the circuit court of the District of Columbia for the county of Alexandria.

This defendant, now and at all times, saving to himself all benefit of exception to many uncertainties, imperfections, and untruths, in the said bill contained, for answer thereto, saith—That ten shares of the stock of the late Merchants' Bank of Alexandria were, at the instigation of Ferdinand Marsteller, deceased, subscribed for in his name. This defendant never received nor applied for the scrip of the said stock, nor did not pay any instalments which were subsequently called for, nor did he receive any of the dividends, but did, the first opportunity, and before the bank was, to his knowledge, in difficulties, dispose of the said ten shares. Ferdinand Marsteller being in his debt at the time, he wished the proceeds to be placed to his credit. This defendant never considered himself as one of the stockholders of the said bank. He certainly had no beneficial interest in the stock which stood in his name. It was the practice in subscribing to all banks, for persons who wished to get many shares to subscribe in the name of their friends, and then get the stock transferred. This may have been the design of F. Marsteller in this instance. This defendant denies all fraud, &c.

ALEXANDRIA COUNTY, *sct.*

George Coleman appeared before me, the subscriber, and made oath that the several matters set forth in the preceding answer are true. Given under my hand, this 19th day of December, 1818.

ADAM LYNN.

Decree for sale by trustees, &c.

At another day, to wit, at a court continued and held for the District and county aforesaid, the 13th day of May, 1819, came the parties by their solicitors, and by consent of all the parties concerned in this cause, it is decreed and ordered, this 13th day of May, 1819, that the defendants, Thomas Swann, Colin Auld, and Edmund I. Lee, do proceed to advertise and sell at public auction, all the lands and tenements conveyed to, or in any manner vested in them, as trustees of the estate, funds, and effects of the late Merchants' Bank of Alexandria, giving eight weeks' notice of the time and place of such sale, to be published twice a week successively in the newspapers printed in Alexandria; and that the said sale be made in such terms as to require one fourth part of the purchase money to be paid in ready money, and the residue in three equal instalments

at six, twelve, and eighteen months, to be secured by such good and sufficient personal security, with a reserved lien upon the premises, as the said trustees shall deem safe. And the said trustees are also authorized to subdivide and sell the premises into such convenient lots as they may deem most conducive to enhance the proceeds. And that the said trustees make report of their proceedings in the premises to the next session of this court, and then bring into court the proceeds of the said sale or sales, and the securities to be taken as aforesaid, in order that the same may be disposed of and distributed under the final order and decree of this court; upon which final disposition and distribution of the same, there shall be submitted to the definitive decision and decree of the court, the respective claims and liens of the complainant and the several banks, referred to in the bill, as claiming a preference under the deed or deeds of trust, by virtue of which the said estates have been vested in the said trustees; and in making such final disposition and distribution of said funds, regard is to be had to any right of preference which may be established under the said trusts. And it is further ordered, that the said trustees do render an account, at the next session of the court, of all the estate, choses in action, money, and effects, which have come into their hands by virtue of the trusts aforesaid; and that the said estate, choses in action, moneys, and effects, so to be accounted for as aforesaid, be subject, in like manner as the proceeds of the lands and tenements herein before ordered to be sold, to final disposition and distribution under the decree of this court, having the like regard to the respective rights of the parties claiming satisfaction of their debts out of the same as aforesaid. This order is not to be construed or taken as any waiver or relinquishment, on the part of any of the defendants, of any plea or defence which he might set up against the claim of the complainants personally to charge the said defendants in this suit.

At another day, to wit, at a court continued and held for the district and county aforesaid, the fourteenth day of May, 1819, came the defendants Daniel Somers and John Jackson, by their solicitor, and the order taken the bill for confessed as to them is set aside; and these defendants filed their answers, which are in the words and figures following:

Answer of Daniel Somers.

The answer of Daniel Somers to a bill of complaint exhibited in the circuit court of the county of Alexandria, by Romulus Riggs, against him and others

This defendant, saving and reserving to himself all manner of advantage and benefit of exception to all uncertainties, errors, and imperfections, in the complainant's said bill of complaint contained, for answer thereto, or to so much thereof as he is advised is material for him to answer unto, he answereth and saith—That he was one of the original subscribers to the Merchants' Bank of Alexandria, and continued a stockholder in the said bank until the 22d day of March, 1816, at which time this defendant sold out his stock, and ceased to be a member of the said association. This defendant begs leave to refer the court to the articles of association of the said Merchants' Bank, filed with the complainant's bill, particularly to the 15th article of the said association. This defendant did suppose that the said articles of association were so framed as to protect him from any personal liability on account of the said bank, and he hopes that such will be the decision of this court.

This defendant is informed, and believes, that the notes upon which the complainant has instituted this suit were bought by him at a very great discount, and since the failure of the said bank. Whether the said notes are genuine, and whether they were issued and put into circulation at the time that this defendant was a stockholder, this defendant knows not; and he insists that the complainants shall make due and satisfactory proof of the same.

This defendant doth not know all the stockholders in the said bank, and cannot say whether they are all included in this suit. He further saith, that the funds of the said bank have been assigned to trustees for the use of the creditors; and this defendant believes that the complainant bought in the said notes after a full knowledge of the said assignment; and, under such circumstances, he has no claim in equity upon this defendant.

This defendant is advised, that, if the complainant is entitled to relief at all, that his relief is at law, and not in equity; and this defendant insists upon this objection, and hopes he may have the same benefit from it, in this his answer, as if he had specially pleaded it.

This defendant denies all fraud and unlawful combination, and prays to be hence dismissed with his reasonable costs, &c.

Sworn to in court, 18th December, 1818.

EDM. I. LEE, *C. C.*

Answer of John Jackson.

The answer of John Jackson to a bill of complaint exhibited in the circuit court of the county of Alexandria, by Romulus Riggs, against him and others.

This defendant, saving and reserving to himself all manner of advantage and benefit of exception to all uncertainties, errors, and imperfections, in the complainant's said bill of complaint contained, for answer thereto, or to so much thereof as he is advised is material for him to answer unto, he answereth and saith—That he was one of the original subscribers to the Merchants' Bank of Alexandria, and continued a stockholder in the said bank until its dissolution.

The defendant begs leave to refer the court to the articles of association of the said Merchants' Bank, filed with the complainant's bill, particularly to the 15th article of the said association. The defendant did suppose that the said articles of association were so framed as to protect him from any personal liability on account of the said bank, and he hopes that such will be the decision of this court.

This defendant is informed, and believes, that the notes upon which the complainant has instituted his suit were bought by him at a very great discount, and since the failure of the said bank. Whether the said notes are genuine, and whether they were put into circulation at the time that this defendant was a stockholder, this defendant knows not; and he insists that the complainant shall make due and satisfactory proof of the same. This defendant does not admit that the said notes were received by the complainant in the District of Columbia. They may have been received in Virginia, where it was unlawful to receive them; and this defendant requires proof to be made of the place where, as well as the time when, the said notes were received.

This defendant doth not know all the stockholders in the said bank, and cannot say whether they are all included in this suit. He further saith that the funds of the said bank have been assigned to trustees, for the use of the creditors; and this defendant believes that the complainant bought in the

said notes after a full knowledge of this assignment; and, under such circumstances, has no claim in equity upon this defendant.

This defendant is advised, that if the complainant is entitled to relief at all, that his relief is at law, and not in equity; and this defendant insists upon this objection, and hopes that he may have the same benefit from it, in this his answer, as if he had specially pleaded it.

This defendant denies all fraud and unlawful combination, and prays to be hence dismissed with his reasonable costs, &c.

JNO. JACKSON.

May 14, 1819.

Sworn to in court.

EDM. I. LEE, *C. C.*

And it is ordered, that the cause be returned to the rules as to the said Daniel Somers and John Jackson. On the 13th day of May, 1819, the answer of James H. Dulany filed, in these words, to wit:

Answer of Jas. H. Dulany.

The separate answer of James H. Dulany to the bill of complaint exhibited by Richard Milne against him and others, charging them with carrying on a joint trade and copartnership in the name and style of the Merchants' Bank of Alexandria, in the circuit court for the District of Columbia, sitting in chancery at Alexandria.

This respondent, saving and reserving to himself all benefit of exception to the many untruths, misrepresentations, and imperfections, in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material to answer, answereth and saith—That, on the 3d day of October, 1815, this respondent subscribed to ten shares in the said Merchants' Bank, which said shares he, in a few days afterwards, the number of which he cannot exactly recollect, but before the credit of the Merchants' Bank of Alexandria was at all impaired, and when its paper was received freely by the other banks in town, transferred and sold to one Cave Withers, then of the town of Alexandria.

This respondent further answereth and saith, that he has never, since he transferred the said shares, had the slightest connexion or concern, of any kind whatsoever, with the said Merchants' Bank, and prays to be hence dismissed with his reasonable costs.

JAMES H. DULANY.

FENDALL for defendant.

DISTRICT OF COLUMBIA, } *set.*
County of Alexandria, }

Personally appeared before me, the subscriber, a justice of the peace for the county aforesaid, James H. Dulany, and made oath, that the matters and things set forth in the within answer, are true, to the best of his knowledge and belief. Given under my hand, this 12th of May, 1819.

A. FAW.

At another day, to wit, at the rules held in the clerk's office of the said court for the month of November, 1819, came the parties, by their solicitors; and the cause is set for hearing on the answers of James H. Dulany,

James R. Riddle, Daniel Somers, and John Jackson; and general replication to Larmour's answer and issue; and dedimus awarded to take depositions; and exceptions to the answer of George Coleman filed, and the exceptions set down for hearing; and the suit is dismissed as to the defendants John A. Stewart and William N. Mills.

[The answer of James R. Riddle, above referred to.]

Answer of J. R. Riddle.

The separate answer of James R. Riddle to the bill of complaint exhibited by Romulus Riggs against him and others, charging them as carrying on a joint trade and copartnership in the name and style of the Merchants' Bank of Alexandria, in the circuit court for the District of Columbia, sitting in chancery at Alexandria.

This respondent, saving to himself all benefit of exception to the many untruths, misrepresentations, and imperfections, in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material to answer, answers and says—That, upon the original institution of the Merchants' Bank of Alexandria, fifty shares of the stock were subscribed for by Ferdinand Marsteller, in his name, which was on or about the first of June, 1815 That, in December in the same year, long before the credit of the bank was at all impaired, and while its paper was taken not less freely than that of any other bank in the place, he sold his stock in the said institution, and has had no concern in its affairs since.

JAMES R. RIDDLE.

T. W. HEWITT for defendant.

ALEXANDRIA COUNTY, *to wit:*

Personally appeared before me, a justice of the for the county aforesaid, J. R. Riddle, and made affirmation, in due form of law, that the matters and things contained in the foregoing answer are true and correct. Given under my hand, 23d April, 1819.

CHRIST'R NEALE.

And at a court continued and held for the District and county aforesaid, the 24th day of December, 1819, came the defendants, Beall and Hagerty, Getty and Cookendorfer, Richard Wood, Alexander Moore, Thomas Mount, Robert Windsor, Thomas Semmes, William Paton, jr.'s administrator, Hugh Carolin, and Joseph Mandeville, and filed their answers, which are in the words and figures following.

(This suit having abated as to the defendants Beall and Hagerty, by their death, their answer is not copied into this record; and for the answer of Joseph Mandeville, see page 4.)

Answer of Getty & Cookendorfer.

The joint answer of Robert Getty and Thomas Cookendorfer to a bill of complaint exhibited by Romulus Riggs against them and others, in the circuit court of the District of Columbia for the county of Alexandria.

These defendants, saving and reserving to themselves all manner of advantage and benefit of exception to all uncertainty, imperfections, and errors, in the complainant's said bill of complaint contained, for answer thereto, or to so much thereof as they are advised is material for them to answer unto,

they answer and say—That, when the Merchants' Bank of Alexandria was about to be formed, these defendants were applied to by Joseph Mandeville, of Alexandria, to lend him their names to him for the purpose of enabling him to subscribe for the stock of said bank in the names of these defendants. These defendants had no intention of becoming members of the said association, but they agreed to lend the said Joseph Mandeville their names for his use, as aforesaid, and accordingly gave him authority to subscribe for them, respectively, one hundred shares of stock in the said bank. These defendants solemnly declare, that they never did authorize any other person to subscribe for them; and if any other person than the said Joseph Mandeville has subscribed for stock in their names, that it was without their knowledge, consent, or authority. These defendants have understood, and believe it to be true, that the said Joseph Mandeville did not use their names in subscribing for the said stock; and these defendants, having no knowledge that any subscription had been made in their names, never considered themselves in any manner concerned or implicated in the said banking association. They never paid a cent towards the said subscription; they never voted upon the stock, or exercised, in any manner whatever, any right, interest, or power, over the same. These defendants do then deny that they were ever members of the said association, and insist that they are not at all responsible for any claim or claims which have or may yet be set up against the said concern. Until the institution of the complainant's suit, these defendants did not know that their names were to be found upon the books of the said banking association. Who placed them there, or caused them to be placed there, these defendants know not: they can only repeat, that they were placed there without the authority of these defendants. These defendants have no knowledge of the claim urged by the complainant against the various defendants in this suit; and upon that and every other point in this cause, in case it should be deemed necessary to the defendants, they should require of the complainant proof of every m tter and thing which may be deemed necessary to enable him to sustain his said cause.

These defendants deny all fraud and unlawful combination, and pray to be hence dismissed, with their reasonable costs, &c.

SWANN, *for the Defendants.*

DISTRICT OF COLUMBIA, } *to wit:*
County of Washington, }

Robert Getty and Thomas Cookendorfer appeared before the subscriber, a justice of the peace for the county aforesaid, and made oath that the several matters and things in the foregoing answer contained, so far as they are stated from their own knowledge, are true; and so far as they are stated from the knowledge of others, they believe to be true. Given under my hand this 29th day of October, 1819.

DANL. REINTZEL.

Answer of Richard Wood.

The separate answer of Richard Wood to a bill of complaint exhibited against him and others, by Romulus Riggs, in the United States' circuit court of the District of Columbia for the county of Alexandria.

This defendant, saving and reserving to himself all benefit of exception to any errors, untruth, and uncertainty, in the complainant's bill contained,

for answer thereunto, or to so much as he is advised he should answer to, he, answering, saith—That he never did subscribe the articles of association referred to in the said bill, or authorize any person to do it for him. That William Paton, jr., subscribed in this defendant's name, without his knowledge or consent, in order to procure votes. That this defendant refused to vote or to have any thing to do with the business. That the said Paton informed him it was necessary he should transfer the stock, as it had been taken in his name. That this defendant did afterwards transfer it, as requested by said Paton, and long previous to the stop made by said bank in its payments. This defendant positively denies any partnership, and knows nothing of the transactions of the said bank. Having nothing further to answer, prays to be dismissed with his costs.

N. S. WISE, *for Defendant.*

ALEXANDRIA COUNTY, *to wit:*

Personally appeared before me, the subscriber, a justice of the peace for the county aforesaid, Richard Wood, who made oath that the several matters and things stated in his answer aforesaid, which are of his own knowledge, are true; and those of the knowledge of others, he believes to be true. Given under my hand, this 11th day of May, 1819.

A. FAW.

Answer of A. Moore. The separate answer of Alexander Moore to a bill of complaint filed against him and others, by Romulus Riggs.

This defendant, saving and reserving to himself all benefit of exception to the errors, untruths, and uncertainty, in the complainant's bill, for answer thereunto, or to as much as he is advised he should answer to, he, answering, saith—That it is true he did subscribe to the articles of association referred to in the complainant's bill, and sold out the stock for which he subscribed in the month of November, 1815, when the bank was in good credit, and long previous to the *purchase* of paper made by the complainant, which was after the bank had failed, as this defendant is informed and believes. This defendant has reason to believe that the complainant had not, at the institution of this suit, any such amount of paper or notes as claimed by his bill: he therefore prays that he may be compelled to produce the same before the court; nor does he believe he came by them in the regular course of business, as charged, but shaved them at enormous discounts after the bank failed. He further says, that many of the notes, purporting to be notes of the Merchants' Bank of Alexandria, are spurious. He denies that he was, or ever considered himself, a partner of the said institution, nor had any thing to do with the management of the same. That he never received any profit or dividend whatever.

This defendant denies all participation or knowledge of the fraud or combination charged; and having nothing further to answer, prays to be dismissed with his costs.

A. MOORE.

May 11, 1819.

DISTRICT OF COLUMBIA, } *sct.*
County of Alexandria, }

Personally appeared before the subscriber, a justice of the peace for the county aforesaid, Alexander Moore, and made oath that the matters and

things set forth as of his own knowledge, in the within answer in chancery, are true; and those stated from the knowledge of others, he believes to be true. Given under my hand, this 11th day of May, 1819.

NEWTON KEENE.

Answer of Thos. Mount. The separate answer of Thomas Mount, to a bill of complaint filed against him and others, by Romulus Riggs.

This defendant, saving and reserving to himself all benefit of exception to the error, untruth, and uncertainty, of the complainant's bill, for answer thereunto, or to as much as he is advised he should answer to, he, answering, saith—That it is true he did subscribe to the articles of association referred to in the complainant's bill. This defendant has reason to believe that the complainant had not, at the institution of his suit, any such amount of paper or notes as is claimed by his bill: he therefore prays that may be compelled to produce the same before the court; nor does he believe he came by them in the regular course of his business, as charged, but shaved them at enormous discounts, after the bank had failed. He further says that many of the notes, purporting to be notes of the Merchants' Bank of Alexandria, are spurious. He denies that he was, or ever considered himself, a partner of said institution, nor had any thing to do with the management of the same. That he never received any profit or dividend whatsoever. This defendant denies all participation or knowledge of the fraud or combination charged; and, having nothing further to answer, prays to be dismissed with his costs.

THOMAS MOUNT.

May 11, 1819.

DISTRICT OF COLUMBIA, } *sct.*
County of Alexandria, }

Personally appeared before the subscriber, a justice of the peace for the county aforesaid, Thomas Mount, and made oath that the matters set forth as of his own knowledge in the within answer in chancery, are all true; and those stated from the knowledge of others, he believes to be true. Given under my hand this 12th day of May, 1819.

A. FAW.

Answer of R. N. Windsor. The separate answer of Robert N. Windsor to a bill of complaint exhibited against him and others in the United States' circuit court of the District of Columbia, for the county of Alexandria.

This defendant, saving and reserving to himself all benefit of exception to the errors, untruths, and uncertainty, in the complainants' bill, for answer thereto, or to as much as he is advised he should answer to, he answers and says—That he never did sign the articles of association referred to in the complainants' bill, nor ever had any interest in, or partnership with, the company called the Merchants' Bank of Alexandria. That Peter Saunders once transferred to this defendant some shares in said bank, which this defendant declined taking, and transferred back again the same date. This defendant had no knowledge or intercourse with said institution, and never considered himself interested in it in any manner. He denies all fraud and combination, and, having nothing further to answer, prays to be dismissed with his costs.

N. S. WISE, *for Defendant.*

ALEXANDRIA COUNTY, *to wit:*

Personally appeared before the subscriber, a justice of the peace for the county aforesaid, Robert N Windsor, who made oath that the several matters and things contained in his answer annexed, which are of his own knowledge, are true; and those of the knowledge of others, he believes to be true.

A. FAW.

Answer of Tho. Semmes. The separate answer of Thomas Semmes to a bill of complaint exhibited against him and others in the United States' circuit court of the District of Columbia for the county of Alexandria, by Romulus Riggs

This defendant, saving and reserving to himself all benefit of exception to the errors, untruths, and uncertainties, in the complainant's bill mentioned, for answer thereto, or to so much as he is advised he should answer to, answering, saith—That it is true he did subscribe to the articles of association in the complainant's bill mentioned. This defendant is informed that it is untrue, as charged, that the complainant came by the paper of the said bank in a regular course of business, but that he shaved it at enormous discounts. He does not admit that he has any such sum of money as charged. He prays that the complainant may be compelled to bring the notes into court, that the real amount in his possession may be known; and, further, that it may appear whether they are genuine, and were issued agreeably to the articles of association made part of his bill. This defendant had nothing to do with the management of the said bank; and, denying all fraud or combination, prays to be dismissed with his costs.

N. S. WISE, *for Defendant.*

ALEXANDRIA COUNTY, *to wit:*

Personally appeared before me, the subscriber, a justice of the peace for the county aforesaid, Thomas Semmes, who made oath that the matters and things stated in his answer annexed, which are of his own knowledge, are true; and those of the knowledge of others, he believes to be true. Given under my hand, this 12th May, 1819.

A. FAW.

Answer of Paton's adm'r. The answer of Noblet Herbert, administrator of William Paton, jr., to a bill of complaint, in the suit of Romulus Riggs, complainant, against the Merchants' Bank of Alexandria, in the circuit court of the District of Columbia for the county of Alexandria.

This defendant, saving and reserving to himself all manner of exception to the said bill, to as much as he is advised is material for him to answer unto, he answers and says—That he is ignorant of the matter set forth by the complainant in relation to the association of the said William Paton, jr., with the subscribers to the Merchants' Bank of Alexandria, and all other facts charged in the said bill that occurred in the life time of the Paton.

This defendant says that he hath fully administered the goods and chattels, rights and credits of the said Paton, that have come to his hands, and prays to be hence dismissed, with his reasonable costs.

N. HERBERT,
Administrator of Wm. Paton, jr.

Answer of Hugh Carolin.

The answer of Hugh Carolin to a bill of complaint exhibited against him and others, in the circuit court of the District of Columbia, and county of Alexandria, by Romulus Riggs.

This defendant, saving and reserving to himself all manner of advantage and benefit of exception to all uncertainties, errors, and imperfections, in the complainant's said bill of complaint contained, for answer thereto, or to so much thereof as he is advised is material for him to answer unto, he answereth and saith—That he was not an original subscriber to the association called the Merchants' Bank of Alexandria, and was not an original stockholder in the said bank. This defendant saith that he bought some of the stock of the said bank, but he sold and transferred it between three and four months before the failure of the said bank. This defendant never considered himself personally responsible for the debts of the said bank, and considered himself fully protected from all personal responsibility by the articles of association, to which he begs leave to refer, and the benefit of which, this defendant hopes will be extended to him in this case. This defendant has never seen the notes upon which the complainant's suit is founded, nor does he know whether they are genurne or not: he must require, therefore, that the complainant should make due proof of the same to the satisfaction of the court. This defendant does not admit that the said notes were issued or sent out by the bank while he, this defendant, was a stockholder, and he insists that the same shall be proved to the satisfaction of the court. This defendant has good reason to believe that the complainant has purchased the notes, upon which his said suit has been instituted, since the failure of the said bank, and at a very great discount, and whether, under such circumstances, he is entitled to relief here, he submits to the court. This defendant is advised that, if the complainant is entitled to relief at all, that the remedy is open to him at law; and this defendant hopes that this objection may avail him in the same manner as if specially pleaded.

This defendant denies all fraud and unlawful combination, and prays to be hence dismissed with his reasonable costs, &c.

COUNTY OF ALEXANDRIA, *sct.*

Hugh Carolin appeared before the subscriber, a justice of the peace for the county aforesaid, and made oath that the matters and things in the foregoing answer contained, so far as they are stated from his own knowledge, are true: and so far as they are stated from the knowledge of others, he believes to be true. Given under my hand this 17th day of December, 1818.

A. FAW.

To which several answers, the complainant replies generally, and issue, and dedimus awarded, and the suit returned to the rules as to those defendants; and, on the complainant's motion, it is ordered that Swann, Lee, and Auld, do state an account of the assets in their hands under the deed of assignment in the bill mentioned, and of the probable dividend it will afford to the creditors of the said bank, whose claims have been preferred under the said deed of assignment. And it is further ordered, that the said Colin Auld do state and report to the court the amount of the complainants' claim against the said bank.

Order for trustees to state an account, &c.

Amended answer of Geo. Coleman.

At a court continued and held for the District and county aforesaid, the 31st day of May, 1820, came the defendant George Coleman, and filed his amended answer, which is in these words:

"This defendant, by way of amendment to his answer heretofore filed, further saith, that he doth not know who made the subscription for him. He inclined to think it was Peter Saunders; but, upon speaking to him upon the subject, he informed him that he knew nothing about it. That he examined the subscription book in the possession of Colin Auld, but could not be satisfied, by an inspection of it, who was the person that made it.

This defendant, further answering, saith, that he can add little to his answer already given in this case. That, at the time of the subscription, coming down stairs from the Col. Ins. Office, this defendant was met by F. Marsteller, who proposed to him to take stock in the bank, which he, the defendant, objected to. The commissioners were then sitting in a room under the insurance office, which was the first he knew of such an institution going to take place. He doth not recollect the particulars of their conversation, but that F. Marsteller said he would have his, the defendant's, name put down for ten shares. This defendant saith that he never did afterwards recognize the said subscription in any manner whatever, excepting by the transfer of the stock herein before mentioned.

SWANN, *for the Defendant.*

DISTRICT OF COLUMBIA, } *sct.*
County of Alexandria, }

George Coleman this day made oath before me, a justice of the peace for the county aforesaid, that the several matters set forth in the within answer of his own knowledge, are true; and those from the knowledge of others, he believes to be true. Given under my hand, this 30th May, 1820.

ADAM LYNN.

To which answer the complainants reply generally, and issue, and the suit is returned to the rules as to the said George Coleman, and a general dedimus is awarded to take depositions.

And at the rules held in the clerk's office, for the month of October, 1820, came the parties, by their solicitors, and the cause is set for hearing on the bill, answers, and exhibits, as to the resident defendants.

And at a court continued and held for the District and county aforesaid, the 3d day of January, 1821, Commissioner Auld filed his report, which is in these words and figures:

FRANCIS KEENE,
vs.
SWANN, LEE, and AULD, and others, } *In Chancery.*

December 15, 1820.

In pursuance to the order of reference in this case, I have ascertained the claim of the plaintiff to amount of the sum of six thousand dollars,

Commissioners' report. arising in the following manner: on the 28th October, 1815, he deposited in the bank $9,000—on the 3d November, he withdrew $500, and on the 4th of May following $2,500=3,000—leaving $6,000 standing at his credit on the books of the late Merchants' Bank of Alexandria, as appears from the said books in my possession.

The certificate of deposite, and the check for the sums withdrawn, are returned with the report.

Respectfully submitted.

COLIN AULD, *M. C.*

$9,000. MERCHANTS' BANK OF ALEXANDRIA,

28th October, 1815.

Francis Keene, esq., has deposited in this institution nine thousand dollars for his own use.

JAS. S. SCOTT, *Cashier.*

ALEXANDRIA, *October 28th*, 1815.

Merchants' Bank, pay Thompson Simpson five hundred dollars.

FRS. KEENE.

$500.

To the Cashier of the Merchants' Bank of Alexandria.

Pay to Thomas Beall, or order, two thousand five hundred dollars. Wood county, Virginia, March 9th, 1816.

$2,500. FRS. KEENE.

(*Endorsed*) Pay to John Hutchenson the within draft.

THOMAS NEALE.

THOMAS JANNEY & CO.

Bill taken for confessed, &c. And at the rules held in the clerk's office, for the month of May, 1821, came the complainants, by his solicitor, and the bill is taken for confessed as to Thomas Swann, Colin Auld, and Edmund I. Lee, James Anderson, Benjamin Baden, Thomas K. Beale, James Bloxham, Corse and Rounsaville, John Cohagan, Camillus Griffith, Robert Hall, Daniel McPherson, Nathaniel Rounsaville, Peter Saunders, James S. Scott, Evan P. Taylor, Ambrose Vasse, Robert Young, Cave Withers, the Mechanics' Bank of Alexandria, the Bank of Washington, Bank of the Metropolis, the Patriotic Bank, the Central Bank of Georgetown and Washington, James R. Riddle, administrator of Ferdinand Marsteller, deceased, and Thomas Cookendorfer, and set for decree, as to them, upon the bill, exhibits, and report of Commissioner Auld; and set for decree upon the bill, exhibits, report, and their answers as to the defendants George Coleman, Beall and Hagerty, Getty and Cookendorfer, John Jackson, Thomas Mount, Noblet Herbert, administrator of William Paton, deceased, Joseph Mandeville, Daniel Somers, William N. Mills, Samuel B. Larmour, John A. Stewart, Alexander Moore, James R. Riddle, James H. Dulany, Hugh Carolin, Robert N. Windsor; and continued as to the non-resident defendants, John Anderson, Daniel Annin, Samuel

Chester, Nimrod Farrow, William H. S. Boswell, Edmund Brooke, George Bruce, jr., Peter Heiskell, Alexander Kyle, John McPherson, late one of the firm of John McPherson and Son, Charles Moxley, Thomas Pickerill, Thomas Neill, Thomas Olive, Thomas Rigdon, William Smith, Thompson Simpson, William A. Linton, executor of William Tyler, Richard Wells, the Franklin Bank of Baltimore, the Bank of Chambersburg, the Bank of Waterford, and the Bank of Winchester.

And at a court continued and held for the District and county aforesaid, the 16th day of January, 1822, came the parties aforesaid, by their solicitors, and the defendants, the Merchants' Bank of Alexandria, the Bank of Washington, the Bank of Metropolis, the Patriotic Bank, and the Central Bank of Georgetown and Washington, appeared by Walter Jones, their solicitor; and, by consent of the plaintiff, and of the several defendants to this suit, including the banks in the bill named as claiming preference,

Decree for sale by trustees, &c.

it is ordered that the trustees, Swann, Auld, and Lee, do proceed to make sale of the property, debts, and effects, claimed or held by them as trustees under the said assignment in the bill mentioned, or which may in any manner have arisen from the property and effects so assigned, upon the terms and in the manner provided in the order made in this cause on the 13th day of May, 1819; and that they bring the proceeds thereof into court, to be subject to the final order and decree, as directed by said order. It is further ordered, that the said trustees do, after making said sale, report to this court a full account of all their transactions under the said deed of trust, showing the nett amount of disposable funds remaining in their hands, subject to the trusts declared by said deed, and showing, also, the amount of claims made upon them by the creditors of said bank, and stating, as far as may be in their power, the validity of such claims. And this suit abates as to James H. Dulany, by his death, and dismissed as to John A. Stewart.

And at a court continued and held for the District and county aforesaid, the 17th of January, 1822, came the parties aforesaid, by their solicitors; and, on motion of the complainant, it is ordered, that Master Commissioner Auld, in addition to the account by him heretofore taken, do state in detail the particulars of the complainant's demand against the defendants, showing, in chronological order, the different periods of time at which the defendants became liable for the several sums claimed from them by the complainant, and ascertaining the amount due under each particular date; and that report thereof to the next term of this court. And, on the complainant's motion, commissions are awarded him for the examination of witnesses; and this suit is returned to the rules, for further proceedings to be had therein, and abates as to the defendants, Moxley, Hagerty, and S. Beall, by their deaths.

And at the rules held in the clerk's office of the said court, for the month of April, 1822, came the defendant, John Corse, by his solicitor, and filed his answer, which follows in these words:

Answer of John Corse.

The separate answer of John Corse to the bill of Romulus Riggs, exhibited against himself and others, styled in the said bill late copartners under the name of the Merchants' Bank

of Alexandria, which said bill is exhibited in the circuit court of the District of Columbia for the county of Alexandria.

This defendant, now and at all times hereafter, saving and reserving to himself all benefit of exception to the many uncertainties, imperfections, and errors, in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material for him at this time to answer, answers and says—That he is not, and that he never was, a copartner of the said Merchants' Bank of Alexandria. That, at the time when the bill charges him to have been so, he was a copartner of Nathaniel Rounsaville, under the firm of Corse and Rounsaville; and that the objects of this firm were entirely confined to the business of printing. That the shares of stock in the Merchants' Bank, subscribed in the name of Corse and Rounsaville, were not subscribed by this defendant; and that the subscription was without his assent or knowledge. That, if the said subscription was made by the said Rounsaville, it attaches no responsibility to this defendant, because its purpose was entirely foreign to the business of the firm of Corse and Rounsaville. This defendant has never done any subsequent act to ratify or approve this subscription; and he never can admit the principle that one partner can, by using the name and style of a firm established for a special and defined purpose, make it liable for speculations and adventures altogether extraneous to it. Under this impression, this defendant cannot apprehend that he shall ever be considered by your honors as responsible for the unauthorized act of his partner; but should this opinion be wrong, this defendant still insists that he is not liable to the complainant. The remedy proper to the complainant's claim is a legal and not an equitable one; and this defendant prays to be admitted to the full benefit of this objection. He further prays, that the complainant may be required to bring into court the notes alleged in the bill to be in his, the complainant's, possession, in order that their amount and genuineness may be inquired into. He farther prays, that the complainant may be compelled to prove whether payment of them has ever been demanded of the bank; when and where they respectively came to his possession; and what sum, precisely, he paid for them, and each of them. For any thing to the contrary within the knowledge or belief of this defendant, these notes may never have been presented to the bank for payment, or they may have been issued previously to the pretended subscription of this defendant, or after the deed of assignment to Swann, Auld, and Lee, mentioned in the bill; or they may have been received by the complainant in Virginia, in violation of a statute of that State; and this defendant expressly denies the allegation of the bill, that they came regularly to the complainant's possession—averring, to the contrary, that they were purchased by him at extraordinarily large discounts, and that the complainant depreciated, as far as in him lay, the value of the Merchants' Bank paper, by public advertisements and other means. On these grounds, this defendant contends that the complainant has no equitable claim against him; and that he has not the shadow of an equitable claim for any thing more than the principal sum which he paid for the notes, and the interest legally accruing thereon.

This defendant insists, moreover, that, as the 15th of the articles of association referred to in the bill, expressly limited the responsibility of the bank to the amount of its joint funds, all the persons doing business with it must be supposed to have recognized it, and are, therefore, not equitably entitled to any advantage which may conflict with it.

This defendant prays that this answer may be received as his answer to every other complaint which is or may be exhibited against him, before your honors, by reason of his pretended copartnership with the Merchants' Bank. This defendant does not know who are all the stockholders of the said bank, and of course cannot say whether they are all included in the complainant's bill. This defendant denies all fraud and combination, &c., and prays to be hence dismissed, with his reasonable costs, &c.

P. R. FENDALL,
Sol. for Defendant.

COUNTY OF ALEXANDRIA, } *sct.*
District of Columbia, }

This day, John Corse personally appeared before me, the subscriber, a justice of the peace for the county aforesaid, and made oath that, of the matters and things contained in the foregoing answer, such as are therein stated to be of his own knowledge, are true; and such as are therein stated on the information of others, he believes to be true. Given under my hand, this 12th day of April, eighteen hundred and twenty-two.

N. S. WISE.

And at the rules held in the clerk's office for the month of May, 1822, came the James S. Scott, and filed his answer in these words:

Answer of J S. Scott.

To the honorable the judges of the circuit court for the District of Columbia.

The answer of James S. Scott, to the bill of complaint exhibited against him by Romulus Riggs and others, in the circuit court of the District of Columbia, held for the county of Alexandria.

This defendant, saving to himself all benefit of exception, now and hereafter, to the many imperfections, uncertainties, and untruths, in the bill of complaint contained, for answer thereto, or to so much thereof as he is advised it is material for him to answer, answers and says—That it is true he did, in the month of May, 1815, subscribe to the capital stock of the Merchants' Bank, thirty shares, agreeable to the articles of association, and paid the sum required thereby; and that, in the month of following, he did transfer and set over, according to the tenor of the said articles of association, to Hugh Carolin, twenty-five shares thereof, *at which time of transfer the whole amount of ten instalments, making one hundred dollars on each share, was fully paid up and completed,* which will more fully appear by reference to the said transfer and stock account of the said Carolin; and which said stock was thereafter, in the month of , in the same year, transferred by said Carolin to Daniel Cawood. That, at the time of the transfer of said stock, it was estimated by the holders at ten per cent. premium; and that the transfer, on the part of this defendant, was considered a matter of courtesy, as others refused to do the same at par value; and that, at the time aforesaid, the notes of the said bank were of current value with other bank notes of the District, and for many months after sustained a foreign credit superior to that of other District notes, as the said bank met the demands upon it promptly in desirable funds, and was at that time perfectly solvent. That other five shares were transferred to J. McPherson and Son, *and that the said transfers were fair and bona fide,* and made to good

and responsible persons, and according to the articles of association and rules of the said bank.

This defendant is also confident that, at the time of the transfer aforesaid, the complainants were not in possession of the notes on which their bill of complaint is predicated; and has good reasons for asserting that the said Riggs (as well as others) possessed himself of these notes at a usurious rate and depreciation, *materially effected by himself.*

This respondent denies that the said parties, or any other person or persons whatever, have any claim or claims against him, under any pretence whatever, in relation to the said Merchants' Bank, as he has fully complied with the conditions required, and also by completing the quotas of subscription; and he hereby makes the said articles of association and transfers a part of his answer.

This respondent admits nothing contained in the bills of the complainants, and calls on them for strict proof. He prays that the said bills may be hence dismissed, with his costs in this behalf unjustly expended.

JAS. S. SCOTT.

ALEXANDRIA COUNTY, *to wit:*

Personally appeared before me, a justice of the peace for the county aforesaid, James S. Scott, and made oath, in due form of law, that the matters and things contained in the foregoing answer are just and true. Given under my hand, this 4th day of May, 1822.

CHR. NEALE.

And at the rules held in the clerk's office for the month of May, 1823, came the complainant, by his solicitor, and replies generally to the answer of John Corse; and the cause is set for hearing on the bill, answers, and depositions.

Trustees' report.

And at a court continued and held for the District and county aforesaid, the 26th day of June, 1824, the trustees of the Merchants' Bank filed their second and final account and report; which is received, allowed, and confirmed, by the court, unless exceptions are filed to it, and the account as therein stated, on or before the first day of next term; which said report, together with the former one filed by said trustees, is in the words and figures following:

DR. *Thomas Swann, Edmund I. Lee, and Colin Auld, (Trustees of the late Merchants' Bank of Alexandria,) in account with the Trust Subject.*

1817.			Good money.	Merchants' Bank paper.
Jan'y 24	To amount of notes received of James S. Scott - - -			$1,534 23
Feb. 6	"	Cam. Griffith's note, endorsed by J. A. Stewart -		700
Apr. 19	"	from Peter Saunders, on account of Swayne's note -		698
Apr. 21	"	John Swayne, on acccount of Peyton's note -		910
May 10	"	Gales, in part - -		80
13	"	N. S. Wise, for note -		181

			Good money.	Merchants' Bank paper.
July	2	To amount from John Jackson & Co., on account of N. M. Allen & Co -		$1,293
Sept.	23	" D. Peabody, one quarter's rent -		150
Oct.	11	" N. S. Wise, balance of note and interest -		87
Nov.	13	" R. Young, for Farrow's note $7,125, interest $665 -		7,792
	26	" of Wm. Tyler's note $1,140, interest $96 -		1,236
Dec.	23	" Kemper's note $826; deduct payment endorsed on it, $119 91 -		706 09
	26	" Hartshorne and Saunders' note - -		722 25
	"	" costs do. - - -	9 39	
	27	" Baylis's note - -		440 70
1818.				
Jan.	12	" Dr. Blake, for stamps -	3 50	
	20	" from R. Young, in part of Edmund Brooke's note		3,933 66
	29	" same—balance of do. and interest -		1,871 75
Feb.	3	" of Thomas Neill's note and interest -		2,930
Mar.	28	" Adams, Herbert, & Co., on Stull and Williams		4,996 70
July	16	" John Rumney, for house on Fairfax street -	410	
Sept.	22	" Farrow's note $7,369, interest $977 75; making together $8,346 75. Deduct credit stock $3,858 75 - -		4,488
	27	" Thompson Simpson's note with interest -		177 75
1819.				
Jan.	21	" rent of house on Fairfax street - - -	142 72	
Mar.	12	" costs in Griffin's case -	9 04	
	"	" Griffith's note with interest		895
1820.				
Dec.	4	To balance due the trustees in current money	25 41	
			$600 06	$35,823 13
		" To balance in the hands of trustees in Merchants' Bank paper, brought down		$35,823 13

[☞ Amount of notes deposited in Mechanics' Bank $152,349.]

Debts, &c., from which something may be realized, but the amount uncertain, viz.

Lands in Fairfax county, conveyed by John McPherson; 848 acres absolutely, and 245 conditionally, subject, however, to a previous lien to William Hepburn, of about $12,000, including interest. A sale of this land has been made by order of one of the trustees for William Hepburn's representatives, which was irregularly conducted, and consequently invalid. The price paid by McPherson to Hepburn was $30,000.			
James Anderson, James English, and Amos Alexander's five bonds. dated 15th December, 1818, and payable, by equal portions, in five years, with interest, in current money - - - - - -	$10,000		
John Rumney's note, payable in 3, 5, 6, 7, 8, and 9, years, by equal portions, from 14th Nov., 1816, with interest - - - - - -		6,846	93
Balance of Gales and Seaton's note, with interest -		430	
An iron chest, which appears to have cost - -	75		

Suits are depending against sundry debtors for about $21,000, from whom it is apprehended little will be obtained.

About $170,000 has been lost by insolvencies.

The amount due to banks which have a preference by the deed of trust, is $37,320 97, exclusive of interest.

Cr.

1817.			Good money.	Merchants' Bank paper.
Jan. 17	By cash paid for carriage of books, iron chest, &c. - -		75	
Mar. 12	"	drawing 3 deeds - -	12	
"	"	Ambrose Vasse, on account of balance stock of	15	
July 19	"	clerk's fees for 1816 -	6	29
1818.				
Jan. 4	"	sundry postages - -	6	25
Feb. 12	"	tax - - -	5	
	"	Cazenove & Vowell's ground		
	"	rent on house on Fairfax		
	"	street, (Rumney's) -	319	74
Oct. 11	"	advertising 13 25; auctioneer, &c., $8 53 - -	21	78
"	"	clerk and marshal's fee bills -	176	18
Dec. 8	"	taxes - - -	6	87
1819.				
May 29	"	clerk of Fairfax - -	10	94
Aug. 10	"	costs, Mandeville and Mc Pherson - -	15	01

			Good money.	Merchants' Bank paper.
Oct.	21	By cash paid clerk, copy bill, &c. -	3 25	
Dec.	31	" sundry postages - -	1	
1820.				
Dec.	4	By balance in the hands of the trustees, in Merchants' paper - -		35,823 13
			$600 06	$35,823 13
1820.				
Dec.	4	By balance due trustees in current money, brought down - -	25 41	
	"	By Edmund I. Lee and Thomas Swann, amount of their account for lawyer's fees, per account filed - -	270	
	"	By Daniel Minor, amount of clerk's and marshal's fees in his hands -	186	
	"	By William Newton's estate, rent of banking-house 9 months, at $350 per annum, (to be paid when assets only,)	262 50	
			$743 91	
	"	By commission for transacting this business, say on $—.		

ROMULUS RIGGS, *et al.*
vs.
SWANN, LEE, AND AULD, *et al.* } *In Chancery.*

December 15, 1820.

In obedience to the decretal order of the honorable court, made in the before named cause at November , 1819, the undersigned, trustees of the late Merchants' Bank of Alexandria, respectfully report, that the foregoing account exhibits their transactions in execution of the trust; and from which it will be perceived they have *no* assets in their hands; but, on the contrary, that the trust subject is indebted to them; and the statement subjoined to the account will give some idea of the meagre prospect of obtaining assets from the outstanding debts and property. Judging from the situation of the property, the aspect of the times, and the movements of the debtors, the creditors whose claims have been preferred by the deed of assignment may, finally, obtain a dividend of 25 per cent. It is to be observed, however, that this estimate is founded on the very verge of probability.

THO. SWANN,
EDM. I. LEE,
COLIN AULD, } *Trustees of Merchants' Bank.*

[2d and final report of trustees.]

Dr.

Thomas Swann, Edmund I. Lee, and Colin Auld, Trustees of the late Merchants' Bank of Alexandria, in account with the Trust Subject.

		Good money.	Merchants' Bank paper.
1821.	To amount of Merchants' Bank paper *retired*, and deposited in Mechanics' Bank - - - -		$152,349 09
	To amount in C. Auld's hands -		35,823 13
Sept. 24	To cash from Jas. English, in part of bond of Anderson, English, and Alexander	$370	
Dec. 31	To amount received by E. I. Lee from John Rumney - - -	120	
"	To amount received from James English by T. Swann, in part of bond -	1,000	
1822.			
Mar. 21	To amount received from Daniel Minor, being the proceeds of a negro girl taken from Anderson, and sold for costs. (A bond of indemnity in this case was given by the trustees to the marshal.) - - - -	125 95	
June 13	To cash from Zimmerman and Hooff for $31 20 of M. B. paper - -	3 12	
"	To cash from Bank of Washington—amount of their purchase, at public sale, of lots Nos. 1 and 2 -	150	
1823.			
May 17	To cash from Joseph Mandeville, for amount of his purchase of lot No. 4 -	110	
"	To James English—amount of his purchase of lot No. 3 - - -	2,020	
May 22	To cash—proceeds of an iron (cast metal) chest - - - -	18 90	
1824.			
May 6	To balance due trustees in current money - - - -	270 06	
		$4,188 03	$188,172 22
1824.			
May 6	To balance due by trustees in Merchants' Bank paper, (bro't down) - -		$188,172 22
	Cr.		
1821.	By balance, as per account reported and filed per order of court - -	$25 41	
Dec. 31	By cash paid James his wages as bank porter - - -	41 50	
"	" Mr. Taylor's fee in Anderson and Wiley's case -	30	

			Good money.	Merchants' Bank paper.
1822.				
Jan. 11	By cash,	Neill and Weedon, serving notices - - -	3 75	
"	"	A. Faw, taking depositions, $4, Bowie, serving notices .50	4 50	
Mar. 11	"	J. S. Scott, for attendance as a witness, &c. - -	15	
"	"	clerk's and marshal's fees, in part, paid Mr. Minor -	125 95	
Dec. 10	"	Samuel Snowden, advertising sale - - -	15 75	
1823.				
May 17	"	auctioneer's commission, selling property - -	58	
"	"	fee paid D. Hoffman for suits against Craven T. Peyton	20	
"	"	advertising sale in Herald -	15 75	
Dec. 31	"	sundry fee bills, paid marshal	29 86	
"	"	costs in sundry suits, paid do.	33 11	
"	"	lawyer's fees in 48 different suits, per acc't - -	270	
"	"	amount of fee bills due clerks of courts for 1818 -	24 82	
"	"	do. for 1819 - - -	35 82	
"	"	do. for 1820 - - -	21 59	
"	"	do. for 1821 - - -	38 96	
"	"	do. for 1822 - - -	11 44	
1824.				
May	"	sundry postages - -	5 25	
" By commission on	{ 188,172 22 3,917 97 }	192,090 19, at 1¾ per cent - -	3,361 57	
" 6 By balance due trust in M. B. paper -				188,172 22
			$4,188 03	188,172 22

" By balance due trustees in current money (bro't down) - - $270 06

ROMULUS RIGGS,
vs.
MERCHANTS' BANK ET AL.

To the honorable the judges of the circuit court of the United States for the District of Columbia, sitting in Alexandria:

The trustees of the late Merchants' Bank of Alexandria beg leave respectfully to report: That, in pursuance of the order made on the 13th day of May, 1819, and a subsequent order on the same subject, after duly advertising the time and place of sale, on the 16th January, 1822, they did proceed to sell at public auction all the lands and tenements conveyed to, or in any manner vested in them as trustees, and all the property, debts, and

effects, claimed or held by them under the assignment, or which did in any manner arise from the property and effects so assigned, on the terms mentioned in the said decretal order, and agreeably to a schedule of the said property, debts, and effects, then exhibited, and herewith filed, and marked with the letter A. That at the sale, as aforesaid, the highest and best bidders were, the Bank of Washington for lot No. 1, at the price of one hundred dollars, and No. 2 at the price of fifty dollars; James English for lot No. 3, at the price of two thousand and twenty dollars; and Joseph Mandeville for lot No. 4, at the price of one hundred and ten dollars; and consequently became the purchasers at the prices before mentioned, amounting, in the whole, to two thousand two hundred and eighty dollars, with which the trustees have charged themselves in the preceding account and they also refer to the auctioneer's account of sales, marked with the B, herewith filed. The preceding statement is the final account of the trustees with respect to the trust property, showing a balance due to them, after taking credit for their commission, of 270 dollars and 6 cents, and leaving in their hands, in Merchants' paper, the sum of 188,172 dollars and 22 cents. During a period of more than seven years, the trustees have devoted much time to this business. It has been of the most troublesome and and vexatious nature, arising from the various searches of the books, and extracts from which were required, and tedious examinations which could not be avoided, of accounts, which ultimately, in many instances, produced no benefit to the trust; the unprincipled conduct of several of the principal debtors; the number of suits it became necessary to prosecute, at an advance of money, and the correspondence in which it involved the trustees with persons at a distance, having accounts with or holding the obligations of the bank. Under all the circumstances of the case, the trustees humbly hope that the honorable court will consider the commission charged reasonable, and allow it accordingly. All which is respectfully submitted.

THO. SWANN.
EDM. I. LEE.
C. AULD.

Alexandria, May 7, 1824.

And at a court continued and held for the district and county aforesaid, the 30th day of April, 1825, came John Cohagan, Robert Hall, and Benjamin Baden, by their solicitor, and filed their answers, which follow in these words, and figures:

Answer of J. Cohagan.

The answer of John Cohagan to a bill of complaint exhibited against him and others in the circuit court of the District of Columbia for the county of Alexandria, by Romulus Riggs and others.

This defendant, saving and reserving to himself all manner of advantage and benefit of exception to all uncertainties, imperfections, and untruths, in the complainant's said bill of complaint contained, for answer thereto, or to as much thereof as he is advised is material for them to answer unto, he answereth and saith—That he was not himself a subscriber to the Merchants' Bank of Alexandria. That five shares of the stock of the said bank were subscribed in his name, but not by any person authorized by him to make the said subscription. This defendant never was in the said Merchants' Bank. That he never dealt with it in any manner, and had no concern with its affairs. As the shares of stock subscribed in his name stood as his pro-

perty on the books of the said bank, he was obliged to make a transfer of the said stock to divest himself of the same, and accordingly made the transfer to Benjamin Baden. This defendant saith, that it was for the very purpose of taking his name from the books of the bank that he made the said transfer; and if this is to make him a stockholder, he must submit to the hard and destructive consequences; but he is advised, and does insist, that he was no stockholder, and that the act of transferring his stock, for the avowed purpose of taking his name from the books of the bank, ought not, and could not, in a court of chancery, be looked upon as such an affirmance of the original void subscription, as to make him a stockholder. This defendant, for these reasons, does deny that he ever was a stockholder of the said bank.

This defendant, having no knowledge of the concerns or transactions of the said bank, must submit to the court, for their careful and equitable consideration, all questions that may have a bearing upon his responsibility, and the extent and effect of that responsibility. Whether the claims which have been set up by the complainants in this case can be enforced against the subscribers to this institution, and to what extent, and in what way, is entirely submitted to the court. This defendant claims the benefit which the articles of association of the Merchants' Bank may afford, as well as any other benefit which he may be entitled to under the law or equity of the case; and he prays to be hence dismissed with his reasonable costs, &c.

SWANN, *for the Defendants.*

COUNTY OF ALEXANDRIA, *to wit:*

John Cohagan appeared before the subscriber, a justice of the peace for the county aforesaid, and made oath that the matters and things in the foregoing answer contained, so far as they are stated from his own knowledge, are true; and so far as they are stated from the knowledge of others, he believes to be true. Given under my hand, this 25th day of April, 1825.

N. S. WISE.

Answer of R. Hall.

The answer of Robert Hall to a bill of complaint exhibited by Romulus Riggs and others, against this defendant and others, in the circuit court of the county of Alexandria.

This defendant, saving and reserving to himself all manner of advantage and benefit of exception to all uncertainties, imperfections, and untruths, in the complainant's said bill of complaint contained, for answer thereto, or to so much thereof as he is advised is material for him to answer unto, he answereth and saith—That he never subscribed for any stock in the Merchants' Bank of Alexandria, nor did he ever authorize any person to subscribe for him. This defendant saith, that ten shares of the stock of the said bank *was* subscribed in his name, with which subscription he was dissatisfied; and, in a few weeks after the subscription had been made, Camillus Griffith offered to this defendant to relieve him of the said stock, and to take it himself. This defendant, for the very purpose of getting rid of the said subscription, and relieving himself from any responsibility on account of the said bank, made the transfer to the said Griffith, and he, the said Griffith, became the real and bona fide holder of the said stock.

This defendant, for these reasons, doth deny that he was a stockholder in the said bank, and he is advised, and does insist, that his transfer of the said stock, for the purpose of getting rid of the said subscription, will not and ought not to constitute a stockholder in the said bank.

This defendant never had any dealings whatever with the said bank, nor ever had any concern with the said bank, other than that of making the aforesaid transfer.

This defendant must submit to the court whether he is responsible to the complainants in this suit; and, if responsible, in what way, and to what extent. This defendant, if the court should deem him responsible, must claim all the benefits which the law and equity of the case may afford to him, and especially every benefit which may be secured to the stockholders by the articles of association.

This defendant denies all fraud and unlawful combination, and prays to be hence dismissed with his reasonable costs.

SWANN, *for the Defendant.*

COUNTY OF ALEXANDRIA, *to wit:*

Robert Hall appeared before the subscriber, a justice of the peace for the county aforesaid, and made oath that the matters and things in the foregoing answer contained, so far as they are stated from his own knowledge, are true; and so far as they are stated from the knowledge of others, he believes to be true. Given under my hand, this 25th day of April, 1825.

ADAM LYNN.

Answer of B. Baden.

The answer of Benjamin Baden to a bill of complaint exhibited by Romulus Riggs and others against him and others, in the circuit court of the county of Alexandria.

This defendant, saving and reserving to himself all manner of advantage to all uncertainties, errors, and imperfections, in the complainants' said bill of complaint contained, for answer thereto, or to so much thereof as he is advised it is material for him to answer unto, he answereth and saith—That he was not a subscriber to the Merchants' Bank of Alexandria, but, after the bank was established, he bought ten shares of the stock of the said bank from Thomas K. Beale, and five shares were transferred to him *to him* by John Cohagan. This defendant doth not recollect the periods at which these transfers were made, but it was some time after the bank had gone into business. Whether the receiving a transfer of these shares made this defendant a partner in the said bank, he must submit to the decision of the court. If this measure should have imposed any responsibility upon him, he is advised he could only be liable for such paper as was issued by the said bank after he obtained the transfers of the said stock.

This defendant does not know whether the complainant is entitled to the relief which he is seeking against this defendant and others. This defendant saith that the notes issued by the said bank were, he believes, all made payable to Charles McKnight, who was then an officer of the said bank, and were endorsed in blank by him for the purpose of making the said notes payable to bearer; and they uniformly circulated as notes payable to bearer, and were paid out by the bank with the intent that they should be so circulated.

This defendant requests the attention of the court to the articles of association under which the said bank was established, and prays to have every benefit which the said articles may afford to him; and he prays, also, to have the benefit of all other matters and things which the law and evidence of the case may entitle him to.

This defendant denies all fraud and unlawful combination, and prays to be hence dismissed, with his reasonable costs.

SWANN, *for the Defendants.*

COUNTY OF ALEXANDRIA, *to wit:*

Benjamin Baden appeared before the subscriber, a justice of the peace for the county aforesaid, and made oath that the matters and things in the foregoing answer contained, so far as they are stated from his own knowledge, are true; and so far as they are stated from the knowledge of others, he believes to be true. Given under my hand, this 26th of April, 1825.

ADAM LYNN.

To which answers the complainant reply generally, and issue, and the cause is returned to the rules for further proceedings, and commissions are awarded to take depositions.

And at a court continued and held for the District and county aforesaid, the 6th day of May, 1825, came the complainants by their solicitor, and on their motion, it is ordered, that Master Commissioner Auld do state and report to this court the sums subscribed by the defendants, respectively, towards the capital stock of the bank in the bill mentioned; the amount paid on such subscriptions; and the sums from the said defendants yet due thereon.

And at the rules held in the clerk's office for the month of November, 1825, came the parties aforesaid by their solicitors, and the cause is set for hearing on the bill, answers, depositions and exhibits; and continued against the absentees.

And at a court continued and held for the District and county aforesaid, the 23d day of December, 1825, came the defendants, Peter Heiskell and James Bloxham, and filed their answers; which are in the words and figures following:

Answer of Peter Heiskell.

The separate answer of Peter Heiskell to the bill of complaint exhibited against him and others by Romulus Riggs, on the chancery side of the circuit court of the said District of Columbia, for the county of Alexandria.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of exception to the many uncertainties, imperfections, and untruths, in the complainant's bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material for him at this time to answer unto, he answereth and saith—That he never was, at any time, either directly or indirectly, a stockholder or partner in the concern or association called the "Merchants' Bank of Alexandria." That, if his name does appear on the original subscription to the stock of said association or bank, which he by no means admits, it has been subscribed by some person unauthorized by this defendant. That he at no time ever acted as a stockholder, or made any claim as such; nor did he know or ever suspect that his name appeared among the stockholders or partners in said association or bank, until he saw the notes of said bank in circulation, and was informed, through the medium of the newspapers, that he had been chosen one of the directors in said institution. He never subscribed himself for said stock, or purchased it from any other person. He denies all fraud and combination, and prays hence to be dismissed, with his reasonable costs, &c.

P. HEISKELL.

STATE OF VIRGINIA, *County of Frederick*, } *sct.*

The within named respondent, Peter Heiskell, personally appeared before me, the subscriber, a justice of the peace for the said county, and made oath, in due form of law, that the several matters of the within answer, by him signed, such as are therein stated to be of his own knowledge are true; and such as are therein stated to be of the knowledge of others, he believes to be true. Given under my hand, this 12th day of November, in the year 1825.

JOHN BELL.

Answer of James Bloxham.

The answer of James Bloxham to the bill of complaint exhibited against him in chancery, by Romulus Riggs and others, in the circuit court of the United States for the county of Alexandria.

This defendant, saving and reserving to himself the benefit of exception to the many errors, untruths, and uncertainties, in the bill of complaint contained, in answer thereto, or to so much as he is advised he should answer to, he answereth and saith—That he never was, at any time, interested to the amount of one cent in the Merchants' Bank of Alexandria. That the stock subscribed in his name, was taken for the use and by the order of one Thomas West Peyton, who was at the time a director of the Farmers' Bank, and who wished to conceal any agency or interest he might have in establishing the said Merchants' Bank. True it is, this defendant did transfer, as will appear by the books of the said bank, but did it at the request of the said Peyton, with*in* having any agency in the taking, or interest in the said transfer. This defendant, totally denying all combination, conspiracy, partnership, or interest, as charged on said bill of the complainant, prays to be dismissed with his costs, &c.

JAS. BLOXHAM.

ALEXANDRIA COUNTY, *to wit:*

Personally appeared before the subscriber, a justice of the peace for the county aforesaid, James Bloxham, and made oath that the matters and things stated in the answer annexed, which are of his own knowledge, are true; and those of the knowledge of others, he believes to be true. Given under my hand this 28th day of November, in the year 1825.

N. S. WISE.

Final decree.

And now here, at this day, to wit, at an United States' circuit court for the District of Columbia, continued and held for the county of Alexandria, the aforesaid 5th day of December, 1827, (till which time this cause had been regularly continued,) William Neale, administrator of Francis Keene, appeared, by Thomson F. Mason, his attorney, and, on his motion, is admitted complainant in this suit; and the cause coming on to be heard upon the bill, answers, depositions, and reports, and the arguments of counsel being heard, it is thereupon, this 5th day of December, 1827, considered by the court, and by the authority thereof ordered, adjudged, and decreed, that, in as much as it appears to the court, from the reports and evidence in the cause, that there are no funds in the hands of the trustees, Thomas Swann, Edmund I. Lee, and Colin Auld, mentioned in the said bill, arising from said sales made under the former orders of the court, in this cause, to be paid or distributed to the

complainant or other creditors, as to the defendants, the said trustees, the bill of the complainants should be dismissed, and it is accordingly hereby so decreed. And it is hereby further ordered and decreed, that the following defendants, Joseph Mandeville, John Jackson, Daniel Somers, James S. Scott, Alexander Moore, Thomas Semmes, Thomas Mount, Hugh Carolin, James R. Riddle, and Benjamin Baden, pay to the complainant the sum of six thousand dollars, with interest thereon from the first day of January, 1818, till paid, and costs. And as to all the other defendants in the complainant's said bill named, it appearing to the court that they are either not served with process to appear to said cause, or, where served with process, not charged by any evidence on the part of the said complainant, the bill of complaint, as to them, is hereby decreed to be dismissed with costs.

And the defendants, against whom this decree is rendered, pray an appeal to the Supreme Court of the United States, which is granted, on their giving bond and security, to be approved by one of the judges of this court.

And afterwards, to wit, at a court continued and held for the District and county aforesaid, the ninth day of December, 1829, the defendants prayed an appeal from the decree rendered in this case, which is granted them.

[N. B. The answers which are copied in this record, were filed in the case of Riggs against the same defendants, and received as their answers in this case.]

DISTRICT OF COLUMBIA, } *to wit:*
Alexandria county, }

I, Edmund I. Lee, clerk of the United States' circuit court of the District of Columbia, for the county of Alexandria, do hereby certify that the foregoing is a true transcript of the record of proceedings in the case of Francis Keene's administrator against the Trustees and Stockholders of the Merchant's Bank of Alexandria and others, lately depending in said court, on the chancery side thereof.

[SEAL.] In testimony whereof, I hereunto set my hand and affix the seal of said court, the 25th day of October, A. D. 1832.

EDM. I. LEE, *C. C.*

791

SUPREME COURT OF THE UNITED STATES.

No. ~~33~~ 57.

JAMES BROWN, PLAINTIFF IN ERROR,

VERSUS

RICHARD R. KEENE.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Writ of error	1	2
Citation	3	2
Certificate of deputy clerk	4	3
Petition of R. R. Keene in district court	5	3
Deed of exchange referred to in petition	7	4
Answer of James Brown	10	5
Amendment thereto	14	6
Testimony	15	6
Documents in evidence	16	7
Sale by De la Bryare to Edward Livingston	19	8
Petition between E. Livingston and trustees of De la Bryare	22	9
Deed from R. R. Keene to James Brown and S. Brown	27	11
Letter from R. R. Keene to James Brown—"Paris, May 13th, 1824"	28	12
Reply—13th May, 1824	29	12
May 14th, 1824—R. R. Keene to James Brown	29	12
" 15th, " do. do.	31	13
" " " do. do.	32	14
" 17th, " do. do.	36	15
Answer of James Brown to petition of R. R. Keene, &c	38	16
Pleas to the jurisdiction overruled	39	16
Final decree	40	17
Bill of exceptions	40	17
Do. do.	41	17
Exhibit B	42	18
Motion and grounds for a new trial	47	20
Do do. do. overruled	49	20
Opinion of the district court	49	21
Petition for writ of error	59	25
Statement of facts	60	25
Certificate of clerk	62	26
Certificate of judge	63	26

J. Brown, plaintiff in error,
vs.
Richard R. Keene.
} *Writ of Error.* No. 3128.

Writ of error filed in clerk's office, 13th July, 1832.

B. B. WALLER, *D. C.*

The United States of America, *ss.*

The President of the United States of America to the honorable judge of the district court of the United States for the eastern district of Louisiana, having circuit court powers, greeting:

Because in the record and process, and also in the rendition of judgment, in a suit wherein Richard Raynal Keene was plaintiff, and James Brown defendant, on the 27th June, 1832, manifest error hath intervened to the great damage of him the said James Brown, as in his complaint hath been stated; and it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the said parties in this behalf, you are hereby commanded, that if judgment be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and associate justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness, the honorable John Marshall, Chief Justice of the Supreme Court of the United States, at the city of Washington aforesaid, this the last day of the said Supreme Court for the January term, 1832, at the city of Washington as aforesaid, and in the fifty-sixth year of the independence of the United States of America.

BYRD B. WALLER,
Deputy Clerk of the E. D. of Louisiana, and having circuit court powers to issue writs of error, &c.

The United States, District of Columbia, to Richard Raynal Keene:

You, R. R. Keene, are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern district of Louisiana, wherein James Brown is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said James Brown, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand and seal, this 8th day of September, 1832.

SAM. H. HARPER, [seal.]
Judge U. S. for La.

J. Brown, plaintiff in error,
vs.
R. R. Keene.
} *Citation.* No. 3128.

The defendant, Richard R. Keene, is in Mexico at present, beyond the jurisdiction of the United States, and will not return before the winter, as I am informed.

L. C. BACON,
Sept. 8th, 1832. *As. Deputy Marshal.*

I hereby certify, at the request of the defendant's counsel, that Richard Raynal Keene, the defendant in error named in the within citation, was perfectly aware of the intention of J. Brown to appeal from the decision in this case; that the petition for a writ of error, and the order of court allowing the same, and the bond directed to be given before the operation of the said writ, were examined by him in the clerk's office, before his departure for Mexico; and that he was informed that the case would be sent up as soon as the transcript accompanying this was completed.

B. B. WALLER,
D'y Cl'k, East. Dist. of La.

NEW ORLEANS, *Sept. 9th*, 1832.

EASTERN DISTRICT OF LOUISIANA, *ss.*

Be it remembered, that on, the ninth day of March, A. D. one thousand eight hundred and thirty-two, into the district court of the United States for the eastern district of Louisiana, came Richard Raynall Keene, a citizen of the State of Maryland, in *propria persona*, and filed his petition against James Brown, a citizen of the State of Louisiana, as follows, to wit:

To the honorable Judge of the District Court of the United States in and for the Eastern District of Louisiana:

The petition of Richard Raynal Keene, a citizen of the State of Maryland, one of the said States, respectfully sets forth, that, on the 21st day of August, in the year of our Lord 1807, in the city of New Orleans, in the district aforesaid, before the then notary public Pedesclaux, your petitioner executed an instrument of conveyance or of exchange, an authentic copy whereof is hereunto annexed; in virtue of which said instrument he transferred to James Brown, a citizen or resident of the State of Louisiana aforesaid, holding his fixed and permanent domicil in the parish of St. Charles, in the district aforesaid, and to Samuel Brown, who is, or lately was, a citizen or resident of the State of Alabama, a tract or parcel of land of the extent of five acres in front, with the usual depth, supposed and believed to be forty acres, so as to comprise two hundred square acres, on the left bank of the river Mississippi, at the English Turn, and gave them possession of the same. That in consideration of, and as an equivalent for, said tract or parcel of land, the said James Brown became and remained bound in virtue of the instrument aforesaid, which was duly signed and executed by them, as well as your petitioner, in the manner aforesaid, separately and jointly to transfer and convey to your prtitioner, and to put him in possession of a lot of ground of the dimensions of sixty feet front and one hundred and twenty feet deep, in the batture of New Orleans, in the district aforesaid, then adjudged to, or belonging to the estate of, in more or less quantity, John Gravier. That the said James Brown, however, as well as the said Samuel Brown, has ever neglected or refused to designate, with precise and specific metes and bounds, the lots of ground aforesaid, and to give to your petitioner possession or seisin of the same. That the said James Brown, being separately and individually, as well as jointly, bound to give to your petitioner possession or seisin of the said lot of ground, with its specified metes and bounds, and having ever neglected and refused so to do, and still neglecting and refusing so to do, and also neglecting and refusing to give to your petitioner the value of said lot of ground, which said value, at the present time, amounts to fifty thousand dollars current money of the State of Lou-

isiana aforesaid: Your petitioner, therefore, prays that the said James Brown be cited to appear and answer this petition, and be condemned to give to your petitioner possession or seisin of the said lot of ground, with the metes and bounds aforesaid, of the value aforesaid, or to pay to him the amount of said value in current money as aforesaid, together with interest, costs, and such other relief as the nature of the case may require.

RICHARD RAYNAL KEENE, *J. P.*

Deed of Exchange referred to in petition.

Know all men by these presents, that I, Richard Raynal Keene, of the city of New Orleans, for and in consideration of a certain lot or parcel of land, consisting of sixty feet front and one hundred and twenty feet deep, situate on the batture lately decreed and adjudged to John Gravier by the Supreme Court holden in said city, have conveyed and transferred, and by these presents do convey and transfer, unto James Brown and Samuel Brown, of said city, all my right, title, and interest, in and to a certain tract or parcel of land, consisting of five arpens front and forty acres deep, and situate at the English Turn, on the left bank of the river Mississippi, be the same more or less, which said tract of land, I, the said Keene, purchased in the year 1805 of Helene Modeste Barbarin Ann Grunault, hereby warranting and defending unto the said James Brown and the said Samuel Brown all my right and title as aforesaid, and unto all persons claiming under them. In testimony whereof, I have hereunto subscribed my name, this 21st August, A. D. 1807.

(Signed,) RICHARD RAYNAL KEENE.
JAMES BROWN.
SAMUEL BROWN.

PIERRE PEDESCLAUX, *Nre.*

I certify the foregoing to be a true copy of the original act extant in my register, according to the laws and usages of this State. In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at New Orleans, this 25th day of February, 1830.

LOUIS L. CAIRE, *Not. Pub.*

Citation to Defendant James Brown.

The President of the United States of America to the marshal of the Eastern District of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded to cite James Brown, so that he be and appear at the district court of the United States for the eastern district of Louisiana, to be holden in the city of New Orleans, on the third Monday in May, 1832, to answer the complaint of Richard Raynal Keene, and that he do file his defence or answer with the clerk of said court on or before the same, or judgment will be given against him by default; and have you then and there this writ. Witness, the honorable Samuel H. Harper, judge of the said court, at the city of New Orleans, this 10th day of March, 1832, and fifty-sixth year of the independence of the United States.

B. B. WALLER, *D. C.*

The foregoing citation, together with the plaintiff's petition, &c. having been placed in the hands of the marshal of said court for service, was re-

turned afterwards, to wit, 10th May, 1832, upon which appears the following return:

"Received March, 1832—served May 9th on Humphrey, the agent of Brown, and at the domicil of James Brown—Returned into court May 19th, 1832.

L. C. BACON, *D. M.*"

And afterwards to wit, on the 21st day of May, 1832, in obedience to the foregoing citation, into the said court came the said James Brown, by his attorney, and filed the following answer to the plaintiff's petition, to wit:

To the honorable District Court of the United States in and for the Eastern District of Louisiana:

The answer of James Brown to the petition of Richard Raynal Keene, shows that your respondent denies the jurisdiction of this honorable court, on the ground that the plaintiff, as well as your respondent, is a citizen of the State of Louisiana, and on the ground, morever, that the heirs of Samuel are, jointly and equally with himself, interested in the defence of this suit, and the said heirs are neither alleged to be, nor in fact are, citizens of the State of Louisiana. Your respondent further alleges, that his wife has lately departed this life, and her heirs have accepted the community of acquits that existed between them; that one-fourth of the demand of the plaintiff, if just, is due by the laws of Louisiana from them, and they are not citizens of Louisiana; so that this honorable court has not jurisdiction over the persons interested in the defence of this suit, nor of the contract on which the suit is founded: wherefore, your respondent prays that this suit may be dismissed, because the court has no jurisdiction of the same. If these pleas to the jurisdiction of the court should be overruled, your respondent says that the act sued upon contains no obligation, on his behalf, to convey to the petitioner a lot of ground on the batture, or that he ever was so liable, as stated in plaintiff's petition, to make such conveyance. Your respondent alleges that the late Peter De la Bigarre, about the 20th day of March, A. D. one thousand eight hundred and four, purchased from John Gravier two undivided thirds of the batture by an act under private signature, which said De la Bigarre caused to be recorded by Pierre Pedesclaux, notary public, on the 27th day of March, in the year one thousand eight hundred and four. Your respondent further shows, that Peter De la Bigarre sold one undivided third of said batture to Edward Livingston, by a private act, dated about the 26th day of March, 1804, and which was recorded on the 25th day of February, 1807, before Eliphalet Fitch, a notary public of New Orleans. Your respondent shows, that Peter De la Bigarre and Edward Livingston having thus acquired interest in the batture, employed your respondent as counsel in prosecuting a suit which John Gravier had commenced against the Corporation of New Orleans for the possession of the batture; and, on the successful termination of said suit, agreed to give him a lot of ground on the batture, measuring sixty feet front on Tchapitoulas street, by one hundred and twenty feet in depth, for and in consideration of his professional services in that case. Your respondent further shows, that, by a partition made between Edward Livingston and the trustees appointed by the will of De la Bigarre, dated the 14th day of August, 1807, and registered by Edward Livingston on the 27th day of August, 1818, they recognized the right of your respondent to said lot of ground, and the trustees for the heirs of said

De la Bigarre agreed to convey the same to him. Your respondent alleges, that he and his brother, Samuel Brown, exchanged their right to said lot with the petitioner for his right to the tract of land mentioned in his petition, without any warranty on either side, and requires the plaintiff to produce any writing in his possession, if he has any, by which it will appear that they merely transferred to him their rights against the proprietors of the batture, and nothing more, and the plaintiff has expressly acknowledged that it was only your respondent's right against Livingston that he purchased.

Your respondent alleges that it was in the power of the plaintiff to have obtained the possession of said lot, because the said Edward Livingston and the heirs of De la Bigarre possessed, until lately, a considerable portion of the batture, and if it is no longer in his power, the opportunity has been lost entirely by his own neglect for many years to make his claim and demand, and your respondent is in no manner liable for the loss. Your respondent further pleads that the demand against him for the value of said lot or damages, if it ever existed, is prescribed by law. He further alleges that, if the claim of the plaintiff were just, he is liable only for one-fourth of the same. He further pleads that the plaintiff, at all events, is only entitled to the value of the lot in the year 1807, and interest from the judicial demand, which value, your respondent alleges, did not exceed five thousand dollars; wherefore your respondent prays judgment in his favor against the plaintiff's demand, and for costs of suit.

As in duty bound, &c.

ISAAC T. PRESTON,
Attorney for Defendant.

The defendant's counsel, upon mentioning his mistake in preparing the foregoing answer, speaking of the value of the said lot in 1807, having inserted the value at *five thousand dollars* instead of *five hundred dollars*, by consent of the plaintiff was permitted to file the following statement, to wit:

"This answer was handed me by Mr. Preston to be copied, in doing which I committed the error of writing *five thousand* instead of five hundred, as in the original. It was then signed by Mr. Preston without reading it over, and filed by me in this court.

GEO. W. LAWSON."

And afterwards, to wit, on the 11th day of June, 1832, at a court of the United States held for the eastern district of Louisiana, the following entry was made upon the minutes of the said court in the said cause, to wit:

Monday, June 11th, 1832.—The court met pursuant to adjournment—Present, honorable Samuel Harper.

RICHARD RAYNAL KEENE, plaintiff,
against
JAMES BROWN, defendant.

This being the day for which this cause had been regularly set for trial, was called, taken up, and argued upon the pleas to the jurisdiction, which was then submitted to the court for decision, together with the whole case upon its merits, with the documents therewith filed and relied on; upon the testimony of D. T. Walden as to the value of the property in 1824 and at the present time; upon the testimony of P. Moore, that Mr. Keene was ab-

sent from Louisiana from 1807 until 1830; on the case of Livingston and others vs. the Marshal, to show they were put in possession of the batture by this court; on the testimony of John Nicholson, to show the possession, by Livingston and others and the heirs of De la Bigarre, of the property on the batture until 1830; that he was one of the executors of A. L. Duncan, deceased, and had no knowledge of Duncan's having ever received the lot, or any equivalent for it, mentioned in the instrument. Speaking of the lot to be conveyed to James Brown by the trustees of the heirs of De la Bigarre, and the further evidence of S. P. More, that he heard James Brown say that he had derived a profit equal to $8,000 from his batture bargain with Keene. Upon all which the court took time to consider and examine the case.

Documents, &c. in evidence.

Dépot.—Aujourd'hui vingt septième jour du mois de Mai, de l'année mil huit cent quatre, la vingt huitième de l'independance Americaine, apres Midi, par devant nous Pierre Pedesclaux, notaire public, des Etas Unis d'Amerique, à la Nouvelle Orleans, capitale de le Louisiane, fut present le sieur Pierre De la Bigarre, habitant à la Nouvelle Yorck, Nord Amerique, actuellement en cette ville, paroisse de St. Louis. Lequel nous a présenté un acte sous signature privée cout sur une feuille de papier ouverte commencant par ces mots par le contrat et lissant par ceux fini les nues juin que dessus: date en son principe du vingt du prèsent mois de Mai, signé Jn. Gravier, Peter De la Bigarre, Eugene Dorsiere, temoin, M. F. Caroline Guillotte, le dit acte portant vente par le dit sieur Jean Gravier au dit sieur comparant de toutes les terres formant batture, renfermées entre le chemin le fleuve, Madame Diilord Sarpy et la ville, le tout faisant front aux domaines de l'habitation du dit Jean Gravier, sous les reserves expliquées au dit acte sous signature privée, le tout moyennant la somme de dix mille piastres payablé en deux termes égaux, au quel acte le dit sieur comparant á nous requis le dépot en notre etudé pour y avoir recours en cas de besoin ce que nous lui avons octroyé aprés avoir signé et paraplié en sa presence le dit acte sous seing privé ne varetur, dont et de tout ce que dessus nous avons dressé le present pour servir et valoir ce que de drot: et juge de son consentement. Fait et passé en notre étude les jour et au que dessus en presence des sieurs Jean Baptiste Ramirez, et Joachine Lozano, temoins a ce requis et appelés qué ont ainsi que le comparant signé en presence de nous notaire soussigne. La minute est signé Peter De la Bigarre, Nre. Annexé. Par le contrat fait le vingtieme jour de Mai, mil huit cent quatre, entre Jean Gravier, de la ville Nouvelle Orleans, d'une part, et Pierre De la Bigarre, de la ville de la Nouvelle Yorck, de l'autre part, il appert qu en consideration de la somme de dix mille piastres payables au dit Jean Gravier aux époques suivantes savoir: cinq mille piastres dans le cour de six cens à compter de la même date des presentes et les cinq autres mille piastres dans le cours de dix huit mois à compter de la même date, le dit Jean Gravier à accordé, rendu et aliené, et par ces presentes accorde, rend, et aliené au dit Pierre De la Bigarre a les heritiers ou ayant cause deux tiers indivises de tout cette partie de terreins ou parcelle de terres situees sur la rive du fleuve de Mississippi et formant le front de la plantation du dit Jean Gravier (maintenant appelée faubourg St. Marie) et s'etendant depuis les limites de la ville de la Nouvelle Orleans le long du dit fleuve ansi loin que peut au dont le faire la plantation au dit Jean Gravier les quelles sont bornes á l'ouest par le grand chemin au route conduisant vers le haut au dit fleuve au nord par les

limites de la dite ville, au sud par les limites de la plantation de la reme Delor et á l'est par le courant au dit fleuve Mississippi, exceptant et réservant seulement une partie de terreins qui forment la devanture de l'islet a Claude François Girod, et rune autre partie de deux terreins vendus a Pierre Farchet toute cette partie de terreins ou parcelle de terres ainsi vendues au dit Pierre De la Bigarre contenant en front sur le dit grand chemin quarante trois lots de soixante pieds de front plus ou moins formant cinq islets et comme les dits quarante trois lots se compartent et etendent, ensemble avec toutes les appartenances des dites terres et quelconques comme aussi trous les droits, titres, et pretensions ou demandes quelconques au dit Jean Gravier dans les deux tiers indivisés ainsi vendus, reversiones, residus, rentes ou profits qui peurent en resultes a lui par le dit Pierre De la Bigarre ses heritiers ou ayans cause de posseder les dits deux tiers indivises des dites parcelle de terres et d'en avoin lui ses heritiers ou ayans cause pleine et entiere jouissance benefices et propretê pour toujours, et le dit Jean Gravier par ces presentes engage personnellement, ses heritiers, executeurs, et administrateurs, convient avec le dit Pierre De la Bigarre ses heritiers ou ayant cause de la maniere et dans la forme suivante savoir que le dit Jean Gravier est veritablement et suivante la loi seul proprietaire des dits terreins ainsi vendus et qui'l a plein pouvoir d'en disposer et que des mêmes terreins sont maintenant libres, nets et dischargés de toutes espèces d'hypothéques au terreins ou demandes quelconques, et finalement que le dit Jean Gravier guarantira et pour toujours defendra les dites terres ainsi vendues au dit: ayant cause en foi de quoi les sul dites et joint apposé leurs cachets les jour et au que dessus. Signé Jn. Gravier, Peter De la Bigarre: sellé et deliveré en presence de Eugene Dorsiere, témoin, M. F. Caroline Guillotte. Pour copies conforme á la minute et la piéce y annexée déposés en mon étude pour recours en foi de quoi jai signé le present et apposé lê le sceau de mon office, à la Nouvelle Orleans, le serze juin mil huit cent toutes dependences, ce renvoi, approuvé cinq notre rayes mils.

LOUIS L. CAIRE, *Not. Pub.*

Signé et paraplié ne varetur au desir de l'acte de dépot de ce jour Nouvelle Orleans, le vingt septième jour de Mai, de l'année huit cent quatre, la vingt huitième de l'independence Américaine, apres mide. Signé PIERRE PEDESCLAUX, *Nre.*

LOUIS L. CAIRE, *Not. Pub.*

Sale by De la Bigarre to E. Livingston.

Know all men by these presents, that I, Peter De la Bigarre, late of the city of New York, do by these presents give, grant, release, and confirm, unto Edward Livingston, late of the city of New York, esq., and to his heirs forever, one undivided third of a parcel of land, two-thirds whereof were this day conveyed to me by John Gravier, of the city of Orleans; and in his deed, bearing even date with these presents, the whole of the said land is described as all those lots or parcels of land situate on the bank of the river Mississippi, and forming the front of the plantation of the said John Gravier, (now called the faubourg St. Marie,) and extending from the limits of the town of New Orleans, along the said river, as far as the plantation of the said John Gravier can or ought to extend. Bounded on the west by the highway or road leading up the said river; on the north by the limits of the said city; on the south by the limits of the habitation of the widow De Lor; and

on the east by the current of the said river Mississippi; and reserving only a parcel of the said land which lies opposite to the square of Claude Francois Girod, and two lots sold to Pierre Fouchett, the whole of the said lands sold to the said Peter De la Bigarre, containing in front, on the said high road forty-three lots of 60 feet front each, more or less, forming five islets, and as far as the said forty-three lots contain and extend, together with all and singular the appurtenances to the said one undivided third part of the said land or lots of ground belonging or in any wise appertaining. To have and to hold the same undivided third part of the above described tract of land, with the appurtenances, (as tenant in common,) each for one equal undivided third part, with me, the said Peter De la Bigarre, and John Gravier, to him, the said Edward Livingston, and his heirs and assigns, to his and their only proper use, benefit, and behoof, for ever. In witness whereof, I have hereunto set my hand and seal, this 26th day of March, A. D. 1804.

(Signed) PETER DE LA BIGARRE.

Signed, sealed, and delivered in the presence of }
(Signed) JOHN THIBAUT. }

Be it remembered, that, on this 5th day of February, A. D. 1807, before me, Eliphalet Fitch, one of the notaries public of the territory of Orleans, residing in the city of New Orleans, personally appeared John Thibaut, to me well known, who, being duly sworn, doth depose and say, that he did see Peter De la Bigarre, the grantor named in the foregoing deed, sign, seal, and deliver the same, on the day the same bears date, and that the name John Thibaut, signed thereto as a witness, is in the proper handwriting of him, the said deponent: whereof I, the said notary, at the request of Edward Livingston, the grantee within named, have registered the said deed.

(Signed) JOHN THIBAUT.

I, Carlile Pollock, a notary public in and for the city of New Orleans, duly commissioned, do hereby certify the foregoing to be a true copy of an act on the records of Eliphalet Fitch, late a notary public in this city, deceased, (said records deposited in my office.) In faith whereof, I grant these presents, under my signature and seal of office, at New Orleans, this 18th of June, 1830.

CARLIDE POLLOCK, *Not. Public.*

Partition between Edward Livingston, and the trustees of the heirs of De la Bigarre.

Par devant nous John Lynd, duement autorisé et commissione notaire public pour la ville et paroisse de la Nouvelle Orleans, second district senatorial de l'Etat de la Louisiane, et en presence des termoins ce après nommés et soussignés. Est comparu Mr. Edward Livingston, avocat demeurant en cette ville. Le quel à requis de nous notaire le transcription sur le register courant des minutes de notre office d'un accord sous seing-privé ecrit sur une feuille entere et remplissant les quatre pages date du quatorze aolit mil huit cent sept, et passè entre lui dit requérant aux les executeurs testamentoires de feu Pierre De la Bigarre à la quelle requisition nous et notaire obtemperant avins transcrit fidelement le dit accord comme suit. "Articles of agreement, sale, and partition, between Edward Livingston, of the one part, and Blaise Cenas, Barthelmy Lafon, and Lairnere Latour, trustees under the will of Peter De la Bigarre, deceased, of the other part." "Whereas

Daniel Clark, Nicholas Girod, and Hypolite Ladotte, referees mutually chosen between the parties to these presents, to appraise the relative value of certain parcels of land called the batture, in front of the suburb St. Mary, held in common between said parties, have made a certain report, dated day of August, instant, which we, the said parties, have agreed shall serve as a basis for the partition of the said property; and whereas block number three, mentioned in the said partition, consisting of twenty-four lots, and the space between them and the river, to the water's edge at the channel of the river, colored red on the map made for the said estimation, has by mutual consent been assigned to the said Edward Livingston, charged with the payment of six thousand one hundred and sixty-nine dollars, payable at the periods at which the instalments on a bond or obligation, made by the said Peter De la Bigarre to John Gravier, for the consideration money of the said lands, shall fall due respectively. And whereas, by the last will and testament of the said Peter De la Bigarre, the said trustees are empowered, not only to make partitions of the said land, but to sell so much thereof as may be necessary to pay the encumbrance and necessary expenses, and to secure the title thereof; and whereas the said land is encumbered to John Gravier for the sum of fifty thousand dollars, of which four thousand only are to be paid by the said Edward Livingston, pursuant to his agreement with the said Peter De la Bigarre, deceased, dated the day of in the year 1804; and whereas two lots of land, of 60 feet front and 120 feet depth, each fronting on the present road, are by agreement to be conveyed James Brown and Abner L. Duncan, respectively, and the sum of one thousand dollars is to be paid to Louis Kerr, esquire, all three counsellors employed in prosecuting the claim of the said John Gravier to the said property; and whereas *sundry expenses* have been *incurred*, and others will *unavoidably accrue to secure the title and possession* of said property—Now, therefore, the said trustees, pursuant to the power vested in them by the said will, have agreed to sell, and do hereby grant, bargain, sell, convey, and make over, to the said Edward Livingston, his heirs and assigns forever, all that part of the said batture which lies between the ancient limits of the town and the said block number three, which begins opposite to the house of Julius Poydras; and they do hereby, in presence of the partition aforesaid, release, quit claim, and assign, to the said Edward Livingston, his heirs and assigns for ever, all that part lying and being between block No. 2 and the block conveyed to the said Edward Livingston by John Gravier, lying between Girod and Julie streets, so that the said Edward Livingston, by virtue of this sale and release, may enjoy, as his separate property, to him and his heirs, of all that part of the said batture so held in common between him and the said Peter De la Bigarre, which is bounded on the one side by the ancient limits of the city of New Orleans, on the second side by the street or highway in front of the said suburb St. Mary, on the third side by the lands or block heretofore sold to the said Edward Livingston by the said John Gravier, lying between Girod and Julie streets, and on the fourth by the bed or channel of the Mississippi river, and the said Edward Livingston hath agreed to release, and do hereby release, quit claim, and assign, to the said trustees, all his right, title, and interest, to all the blocks numbered on the map aforesaid, with numbers, of four, five, and six, the part opposite thereto on the said map colored red between them and the river being reserved for further division, to hold the said blocks or squares subject to the trusts contained in said will. The said sales and re-

leases being made on the following considerations and terms, to wit: on the part of the said Edward Livingston—1st. That he shall pay to the said John Gravier the whole of the said sum of fifty thousand dollars, at the several periods stipulated in the sale to the said Peter De la Bigarre. 2d. That the said Edward Livingston shall exonerate, and doth hereby forever discharge, the estate of the said Peter De la Bigarre, of and from all *all* demands for or on account of his professional personal services in the said suit, in the Supreme Court aforesaid. 3d. That the said Edward Livingston shall pay to the said Louis Kerr the sum of one thousand dollars, so due to him as aforesaid. 4th. And, finally, that the said Edward Livingston shall pay, in final discharge of all sums due to the estate of the said Peter De la Bigarre, on account of said joint property, the sum of eleven thousand dollars, in manner following; that is to say: one-third in one month, one-third in three months, and one-third in six months, from this date; and on the part of the said trustees, that they will convey to the said James Brown and Abner L. Duncan the said two lots of land, respectively, out of their proportions of the said batture. In witness whereof, the said parties have hereunto set their hands and seals, this fourteenth day of August, in the year of our Lord 1807. Made by triplicates—one copy to be deposited with the clerk of the city court, and one copy kept by each of the said parties.

(Signed) EDW. LIVINGSTON. [SEAL.]
B. CENAS. [SEAL.]
LAFON. [SEAL.]
A. LAIARNERE LATOUR. [SEAL.]

Sealed and delivered in the presence of
JH. PILIE.
A. INVARD.

Des quel enrègistrement et transcription le st. comparant a requis acte a lui octroyè pour servir ce que de droit. Et il a retire l'original. Fait et passe à la Nouvelle Orleans, en l'etude le vingt septime jour d'Avril, de l'anne mil huit cent dix huit, la quarante dixieme de l'independence Americaine, en presence de Messrs. Hugh K. Gordon et Jules Davezac, tous deux temoines domiciles en cette ville jui ont ainsi que le requerant signe avec nous notaire lecture faite.

(Signed) EDWARD LIVINGSTON.
JULES DAVEZAC.
HU. K. GORDON.

JOHN LYND, *Not. Pub.*

I do hereby certify the foregoing to be a true copy of the original, extant in my office; in faith whereof, I hereunto set my hand, and *and* affix my seal of office, on this 14th day of December, A. D. 1830.

G. R. STRINGER, *Not. Pub.*

Deed from R. R. Keene to James Brown and S. Brown.

Know all men by these presents, that I, Richard Raynal Keene, of the city of New Orleans, for and in consideration of a tract of land in the English Turn, on the New Orleans side of the Mississippi, consisting of five acres front on said river, by the usual depth, being part of the old fort lands, do by these presents sell and transfer unto James Brown and Samuel Brown,

of the said city, the following slaves, to wit: Strap, husband of Nanny; Nanny Jenny, their daughter; and the boys Ellick, Henry, Dick, and Washington; hereby guaranteeing the said sale to the said James and Samuel Brown. Given under my hand, this 28th day of September, A. D. 1807.

(Signed) RICHARD RAYNAL KEENE.
SAMUEL BROWN.

JN. BTE. RAMIREZ.
TOCQ. LOZANO.
PIERRE PEDESCLAUX, *Nre.*

I hereby certify the foregoing to be a true copy of the original act extant in my register, according to the laws and usage of this State. In faith whereof, I grant these presents, under my signature, and the impress of my seal of office, at New Orleans, this 8th day of June, A. D. 1832.

LOUIS L. CAIRE, *Not. Pub.*

Correspondence or letters by R. R. Keene to James Brown, dated at Paris.

May 13th, 1824.

DEAR SIR: To avoid mixing a private subject with one (that of my passport) on which I have addressed you in your public character, I send you this note apart, merely to beg of you the favor of such a paper as would enable to establish my right and title to the lot in New Orleans that we bargained for before I left that place. In testimony of my remembrance of our former friendship, I shall send you, from the United States, an exposition, the publication of which I shall cause to be made as soon as I shall arrive there, which, while it will prove the falsehood and malice that have been employed against me, will also contain some documents relative to an *old intrigue*, which, as well as I recollect, was attempted to be made detrimental to yourself as well as to many of your friends.

I remain, most respectfully, your most obedient servant,

R. R. KEENE.

JAS. BROWN, Esq. &c. &c. &c.

2d.

Mr. Brown presents his respects to Col. Keene, and returns him his passport, which is invested with all the forms necessary to its validity. The impropriety of issuing an American passport to one who at the same time holds the paper you sent, must be obvious on a moment's reflection, and the proposal to send one to Bordeaux is utterly inadmissible. Col. Keene will find the contract between himself and Mr. Brown in the office of Pedesclaux, at New Orleans. It was drawn up, I think, by Lozano, who, I think, yet resides there.

PARIS, *May 13th*, 1824.

3d.

PARIS, Rue Richelieu, Hôtel d'Espagne, *May 14th*, 1832.

SIR: As upon reflection, particularly with your last note before me, my memory is so far refreshed as to be able to recollect that, in or about 1807, I conveyed to you, in New Orleans, a tract of land in or near the English Turn, about five leagues below that city, on the left bank of the Mississippi,

for which I was to receive, as the equivalent on your part, a lot of ground in the batture—the same lot that Edward Livingston, esquire, was to give you for your services in his favor in the batture cause: Now, as that lot was not transferred to me when I left Louisiana on account of the embarrassed state in which the batture then was, and on account also of my expectation at that time to see you in New Orleans, I avail myself of the casualty that has brought us together in this place, to request of you to have the goodness to subjoin to this note a statement of the purport of the one contained in the accompanying paper, whereby I may be authorized to call upon Mr. Livingston for the transfer of the lot in question, without the necessity of our having to carry on any correspondence across the Atlantic upon the subject.

I am, sir, your most obedient humble servant,

RICHARD RAYNAL KEENE,

Ex-Colonel in the late Constitutional service of Spain.

To his excellency JAMES BROWN,

Ambassador of the United States near his Most Christian Majesty.

The purport alluded to in the accompanying letter—Mr. Brown, of course, making the terms to suit himself:

Edward Livingston, esquire, of New Orleans, or his representatives, as requested in the foregoing note, will transfer, or cause to be transferred to (naming K.) or his representative, the lot referred to in said note, in virtue of the consideration therein mentioned.

4th.

PARIS, *May 15th*, 1824.

DEAR SIR: As my object, as already mentioned, was merely to show my right from you to be your substitute for receiving the conveyance from or through Mr. Livingston, of New Orleans, of the lot in the batture of that city, which he promised you for your services in the batture case; and as the equivalent given you by me I considered, and still consider, as an essential circumstance or fact that ought to be acknowledged by you, for enabling me to receive the conveyance in question; and as that equivalent consisted of a tract of land in the English Turn, near New Orleans, over which you must have exercised dominion or ownership, I could therefore wish, though I am really sorry to trouble you, that you would do me the favor of having received the equivalent as stated. I recollect well to have arranged, in conversation with Mr. Davis, about an exchange of the forementioned lot for a cotton plantation (a very small one, I believe,) below the English Turn; but as I left New Orleans before the exchange was effected, and as, in fact, Davis held back on account of the violent possession that thereafter was taken of the batture by Mr. Jefferson's order, I have ever considered that the aforesaid conversation between Davis and myself, *through his own act*, fell to the ground, and was left without force.

I am, sir, very respectfully,

Your most obed't humble serv't,

R. R. KEENE.

JAMES BROWN, &c. &c. &c.

5th.

May 15th, 1824.

DEAR SIR: On looking over your note of this morning a second time, I see what was overlooked in the hasty reading I gave it on receiving it, to wit, that, at the time of our agreement, or before you left New Orleans, you told *Col. Davis that you had given a note to Mr. Livingston to substitute for yourself, as the owner of the batture lot*, the same that forms the subject of our correspondence. Now, if that note should have been mislaid by Mr. Livingston (which is by no means an unlikely thing) what redress shall I have in *in* calling on him for a conveyance of that lot? Why, I must write from Louisiana to Paris to get a duplicate of it from you. But now that I am in the same place with you, is it not reasonable for me to expect of you such a duplicate? Great inconvenience may be prevented by it, and no evil can arise from it; like a bill of exchange, a hundred sets may be given of it without any injury to any person. You can easily state *state* in this duplicate that it is given to *have effect only in case the original has not been made operative.* But as our lives are all uncertain, I do conceive that in this duplicate you ought to mention your receipt already of the equivalent, *for it may very well appear in the deed I gave you at Pedesclaux's for the ground at the E. Turn*, that no mention whatever is made of the batture lot (although *you and myself know that this was the consideration to be given to me,) but only the valuable consideration of a dollar without any other specifications whatever.* This is an event highly probable. I know that you would never take advantage of this defect, but in the supposition of your decease, what might not your heirs or executors do, in utter ignorance of the previous circumstances. No person knows better than yourself what accidents and even disasters have arisen from want of caution in contracts, or rather the omitting to carry them into effect according to the bona fide intention of *of* the original parties concerned. It appears, therefore, so reasonable that you should send me the duplicate order to Livingston, under the instruction, or with the proviso mentioned, that you must excuse me for insisting, as I do, most decidedly, upon having it before I leave Paris, which is as likely to be within a day or two as within a week or two. No injury, I repeat, can possibly result to you in giving it, whilst much might accrue to me for the want of it. As to he can possibly have claim on you, and as to myself I certainly feel assured that he has none on me. Since the morning, I have reflected more on the part relating to him than I had done for the last 13 years, and have recalled to mind the following circumstances: In the latter part of 1807, or about August or September, when I was about to go for Ellen to the northward, Davis and myself conversed about an exchange of the batture lot for, as I understood, a small sugar and not a cotton plantation (as I erroneously mentioned this morning) below Jentilly's; and, under this impression, a deed of exchange was made out at Pedesclaux's with the express mention of a sugar plantation, or rather a deed of conveyance to me from Davis of *such* a plantation, *but Davis never executed it.* In the same period, I satisfied Thos. Elmer of my being about to render a singular service to the Captain General of Cuba in respect of a power with which Spain was then at war, and of the consequent facility I should have to sell in Havana a cargo *o* Kentucky tobacco, provided it was of the best quality. He professed to sell me such, asking for it $6 per cwt., whilst the common price was about 4 or 4½ dollars. I gave him a lien upon

the cargo, and also made over to him, as collateral security, some property in Louisiana, among which was mentioned the sugar plantation of Davis, for the deed conveying it to me was already before made out, and I had Davis's promise to sign it. I went to the Havana; the tobacco, through great favor, was received into the royal factory for purchase, the lowest price for prime Kentucky tobacco being $14 per cwt. in cash; but instead of prime tobacco, the far greater part of it turned out to be *trash, and as such was condemned and burnt.* In 1811, when I returned from Spain to the Havana, an agent, Benjamin Chardon, of Cross Ellis, and Shaw, of New York, to whom Elmer had transferred his claim on me, presented against me a demand of 18,000 on account of the claim. As Chardon carried out letters of introduction to all the American merchants in the Havana, I empowered him to appoint any three of them that he should like best as arbitrators to decide upon his claim and upon my counter claim. He did so: named Mr. Murdock, of Philadelphia, Mr. Lawrence, of New York, and Mr. Savage, of Boston, all gentlemen and merchants of the first respectability. Chardon and myself bound ourselves under the penalty of $20,000 to abide by the award; an award was given to me, or in my favor, for $1,350, and paid by Chardon. In the discussion of the case, a judicial document appeared among the papers furnished by Elmer from New Orleans, setting forth that Captain Samuel Davis had never *conveyed to me any sugar plantation in the place described.* The truth must have that Davis, when he went to sign the deed of exchange of our respective properties, saw that he could not, or ought not, to sign any such deed, as not *possessing the property* (the sugar plantation) described in that deed to be sold by him. Thus, then fell to the ground the talked of exchange between Davis and myself; and since the date of the forementioned document sent to the Havana by Elmer, I certainly have had no sort of communication whatever with Davis, so that he can have no possible claim on me for the lot in question.

I am, very respectfully,

Your obed't humble serv't,

R. R. KEENE.

JAMES BROWN, ESQ., &c. &c. &c.

PARIS, *May* 17*th*, 1824.

DEAR SIR: Your last note I conceive to be such as will answer my main purpose as already explained. I certainly have no hesitation in acknowledging that your responsibility about the batture lot does not extend beyond your substituting me for yourself in respect of the conveyance to be made by Mr. Livingston, in the sense explained by you. Now, having arrived at the satisfactory close of this business, I rely on your goodness for submitting to your inspection the accompanying certificate of Gen. Quiraga, which shows the spoliation I sustained of 19,500 dollars in the cause of the S. Constitution, without any indemnity or reimbursement whatever—a spoliation that has caused me to be placed here in a foreign country without the means, absolutely, of going on to Bordeaux, much less to the Havana where I have some funds. If, then, you would do me the signal favor to lend me two hundred dollars to enable me to get to the Havana, I will, most assuredly refund it to you from that place in any manner you may now direct; and be persuaded that *the favor will not be thrown away.* I will at the same time, besides my separate obligation, endorse to you a

promissory note of Mr. Hackley, of New York, or Richmond, (the brother-in-law of T. M. Randolph,) formerly American Consul in Spain, for three hundred dollars, as an additional security for your re-imbursement.

I am, most respectfully,
Your very obed't humble serv't,
R. R. KEENE.

JAMES BROWN, &c.

P. S. As my letter of Saturday morning last might hereafter, by possibility, fall into other hands than your own, I would just remark, that the favor I rendered the Captain General of Cuba in 1807, that obtained for me the entry and sale, in the royal factory of the Havana, of New Orleans tobacco, was the carrying from New Orleans to the Havana a relation of his whom he desired much to have with him, and whom no merchant in N. O. would suffer to give his vessel for fear of its being discovered by the English.

Answer of James Brown filed 13th December, 1830, to the petition of R. R. Keene—same action, and in which a non-suit was entered.

To the honorable the Judge of the District Court of the United States for the Eastern District of Louisiana:

The answer of James Brown to the petition of Richard R. Keene respectfully showeth, that your respondent is not liable to convey to the petitioner a lot of ground as stated in his petition. Your respondent alleges that Edward Livingston and Peter De la Bigarre having acquired an interest in the batture, employed your respondent as their counsel in prosecuting the suit of John Gravier against the Corporation of New Orleans before the late superior court of the Territory of Orleans for the batture; and, in consideration of his professional services, on the successful termination of said suit, agreed to give a lot of ground measuring 60 feet front on Tchopetoulas street by one hundred and twenty feet in depth, as appears by the act hereunto annexed. Your respondent alleges that, by the act referred to in the plaintiff's petition, he transferred to him his right to said lot and nothing more; that he gave no guarantee to the plaintiff, who was perfectly acquainted with the nature of your respondent's claim. Your respondent denies that the right to said property has been lost; and if the same has been lost, it has been entirely through the neglect and absence of the plaintiff; and your respondent is in no manner liable to him; and for trial puts himself on the country: wherefore your respondent prays judgment in his favor.

As in duty bound, &c.

MAZAREAU & PRESTON,
Att'ys for the Deft.

UNITED STATES' DISTRICT COURT, WEDNESDAY, JUNE 27th, 1832.

The court met pursuant to adjournment—Present the Hon. SAM'L H. HARPER.

RICHARD RAYNAL KEENE, plaintiff,
vs.
JAMES BROWN, defendant.

The court having first considered the pleas to the jurisdiction in this case, doth now overrule the same.

And on the same day, to wit, on the 27th June, 1832, the following final decree was pronounced in the said cause, to wit:

UNITED STATES' DISTRICT COURT, WEDNESDAY, JUNE 27th, 1832.

Present: Hon. SAM'L H. HARPER.

RICHARD RAYNAL KEENE, plaintiff,
vs.
JAMES BROWN, defendant.

The court having maturely considered this case upon its merits, doth now adjudge, order, and decree, that the plaintiff do recover from the defendant the sum of two thousand dollars, with damages equal to interest thereon at the rate of six per centum per annum from the 28th day of September, 1807, until paid, and the costs of this suit.

SAM'L H. HARPER, *Judge U. S.*

Judgment signed July 5th, 1832.

B. WALLER, *D. C.*

RICHARD RAYNAL KEENE, plaintiff,
vs.
JAMES BROWN, defendant.

This cause having been called for trial, the defendant offered in evidence the records annexed, marked A and B, to support the allegation in his petition, that the plaintiff was a citizen of Louisiana; and also offered parol evidence in support of said allegation. The court rejected all said evidence on the ground that the rule of court made the 20th March, 1830, disallowed any denial of the allegation of citizenship made in the petition, unless verified by affidavit filed therewith by the counsel, agent, or party, as to their belief of the truth thereof; to which opinion of the court the counsel of the defendant excepted, and prayed the court to sign his bill of exceptions; which is done, June, 1832.

SAM'L H. HARPER, *Judge U. S.*

R. R. KEENE, plaintiff,
vs.
JAMES BROWN, defendant.

On the second plea to the jurisdiction of the court in this case, the defendant proved by Samuel Morgan and William Kelly, that Dr. Samuel Brown had established a cotton plantation near Huntsville, in the State of Alabama, ten or twelve years ago; he was considered a citizen of that State; he was four years a professor in Kentucky, and resided there; lived on his plantation about 18 months before his death, and left children, one of whom is in Philadelphia, the other travelling; that the State of Alabama is considered their home; the son visits Louisiana sometimes. The court overruled the plea to the jurisdiction of the court; to which opinion of the court the defendant excepted, and prayed the court to sign his bill of exceptions; which is done.

SAM'L H. HARPER, *Judge U. S.*

Exhibit B.

STATE OF LOUISIANA, *First Judicial District.*

RICHARD RAYNAL KEENE, *vs.* J. and S. BROWN. } *No.* 8,745. *Pet. filed 5th March*, 1830.

To the hon. the Judge of the first judicial district of the State of Louisiana.

The petition of Richard Raynal Keene, a resident of the city of New Orleans, respectfully states, that your pet. on the 21st day of August, A D. 1807, made and executed before the notary Pedesclaux, in said city, with James Brown, ex-minister plenipotentiary or diplomatic agent of the United States at the court of Paris, and now holding his domicil at Philadelphia, in the State of Pennsylvania, and Samuel Brown, brother of the said James, now deceased, an agreement or bargain of exchange; in and by which agreement, as from an authentic copy thereof hereunto annexed will more fully appear, they, the said James Brown and Samuel Brown, received a conveyance of, and exercised dominion over from your pet. a certain tract or parcel of land, consisting of 5 acres front and 40 acres deep, at the English Turn, on the left bank of the Mississippi, for and in consideration of which tract of land they, the said James and Samuel Brown, were bound to your pet. in possession, as his lawful and exclusive property, a certain parcel or lot of ground to consist of 60 feet front and one hundred and twenty feet deep, situated on the batture, then recently assigned to John Gravier by the superior court of said city of New Orleans. That the said James and Samuel Brown although having taken possession of, and having exercised dominion and ownership over, said tract of land, have never yet put your pet. in posssesion of, or enabled him to exercise dominion or ownership over, said lot; neither have they made, or caused to be made, any specification of the precise locality or relative situation of said lot, whereby possession could be taken of it; nor have they paid, or caused to be made, to your pet. payment of the price and value of said lot, (which said price or value your pet. avers to be twenty thousand dollars,) although repeated application has been made for the same: wherefore your pet. prays that the said James Brown, for himself and in behalf of his said brother Samuel Brown, be cited to appear through a *curator ad hoc* to be appointed by your honor, and be ordered and adjudged to put your pet. in possession of said lot of ground, or to pay him the price and value aforesaid of twenty thousand dollars, together with all such other relief as justice may require, and costs.

(Signed) RICH'D RAYNAL KEENE, *J. P.*

Judges' Order.

It is ordered, that John B. Humphreys be and he is hereby appointed attorney *ad hoc*, to the absent defendant James Brown.

(Signed) JOSHUA LEWIS.

Citation.

THE STATE OF LOUISIANA, *First Judicial District Court.*

R. R. KEENE, *vs.* J. and S. BROWN. } 8,745.

Mr. James Brown, for himself and in behalf of his brother Samuel

Brown, deceased, by John Humphreys, appointed attorney *ad hoc*. You are hereby summoned to appear at the office of the sheriff of the parish of New Orleans, and comply with the prayer of the annexed petition, or file your answer thereto, in writing, in the office of the clerk of the first judicial district court, at the city of New Orleans, in ten days after the same hereof. Witness, the hon. J. Lewis, judge of the said court, the 5th day of March, 1830.

(Signed) JOHN LEWIS, *Clerk.*

Sheriff's Return.

Received March 5th, 1830—I served, on the 11th of said month, copy of the petition and citation on John B. Humphreys. Returned March 11th, 1830.

(Signed) J. H. HOLLAND,
Dy. Sheriff.

Judgment by default, 25th March, 1830.

RICHARD R. KEENE, *vs.* J. and S. BROWN. } *No.* 8745.

On motion of the plaintiff, on giving the court to understand that the defendants have failed to appear by their attorney *ad hoc*, or to file an answer, it is ordered by the court that judgment by default be entered herein.

Order, 3d April, 1830.

R. R. KEENE, *vs.* J. and S. BROWN. } *No.* 8745.

On motion of the plaintiff, it is ordered by the court that this case be discontinued.

STATE OF LOUISIANA, *First Judicial District Court.*

I hereby certify the foregoing petition, judgment by default, and order, to be copies from the originals on file in the office of the clerk of this court among the proceedings had in the above case. Clerk's office, this 8th day of June, 1832.

JNO. LEWIS, *Clerk.*

I, Joshua Lewis, sole judge of the first judicial district court of the State of Louisiana, do hereby certify that John L. Lewis is clerk of the said court, and that the signature "Jno. Lewis, clk.," to the foregoing certificate, is in the proper handwriting of him, the said clerk. To his acts, as such, full faith and credit is due and owing; and I do further certify that his certificate is in due form of law. Given under my hand and seal, at the city of New Orleans, on this 8th day of June, A. D. 1832.

JOSHUA LEWIS. [L. S.]

And afterwards, to wit, on the 29th day of June, 1832, the following entry was made in the said cause upon the minutes of the said court, viz.

NEW ORLEANS, FRIDAY, *June 29th*, 1832.

Special court. Present: Hon. SAM'L H. HARPER.

R. R. KEENE,
vs.
JAMES BROWN.

On this day the defendant, by his counsel, and with the consent of the plaintiff, moved the court to grant a new trial upon the grounds contained in a statement then filed; which was submitted to the court for decision.

Grounds for new trial filed 29th June, 1832.

DISTRICT COURT OF THE U. S.—*Eastern District of Louisiana.*

RICHARD R. KEENE,
vs.
JAMES BROWN.

In this case the defendant, by his counsel, prays for a new trial on the grounds—1st. That the written evidence on file, and which is all the evidence offered on the trial, (except the parol testimony of D. T. Walden as to the value of the batture lots at different periods, and that of Samuel P. More which is incorporated in a bill of exceptions,) does not, in law, entitle the plaintiff to the judgment he has obtained.

2dly. The judgment is given for two thousand dollars damages, with interest, although the laws of Louisiana do not allow interest upon damages. Code of Practice, article 554.

3dly. Interest is allowed at the rate of six per centum per annum, although the laws of Louisiana allow but five per cent. interest per annum. Civil Code, art 2,895.

4th. The judgment allows interest from the year 1807, although interest is prescribed by law by the lapse of five years; and prescription was expressly plead against the plaintiff's demand. Old Civil Code, page 488, art. 78: New Code, art. 3,503, 3,505.

5thly. If the interest allowed be allowed in the nature of damages, it is not due by the laws of Louisiana, except from the time the defendant was formally put in default. Civil Code, art. 1,927. Wherefore, the defendant prays that the judgment rendered may be set aside, and a new trial granted; as in duty bound, &c.

ISAAC T. PRESTON,
of Counsel for the Deft.

Order of 30th June, 1832.

UNITED STATES' DISTRICT COURT.

The court met pursuant to adjournment. Present: Hon. SAM'L H. HARPER.

RICHARD R. KEENE,
vs.
JAMES BROWN.

The court having considered the motion for a new trial in this case, upon the grounds filed, doth now order that the same be overruled.

The following is the opinion of his honor Samuel H. Harper, filed upon the application of the parties, among the other papers of the said cause, read by him at the time of the rendition of the foregoing final judgment, to wit:

RICHARD R. KEENE,
vs.
JAMES BROWN.

Neither party in this case having prayed for a trial by jury, it is submitted to the court for decision, according to the practice in Louisiana in such cases. The plaintiff has brought this suit to recover of the defendant a lot of ground of 60 feet front and 120 feet in depth, in that part of the city of New Orlnans called the *batture*, or the price or value of said lot at the time suit was brought. His claim is founded on the following notarial instrument, bearing date 21st August, 1807, (see document marked C.) To this action the defendant pleads—1st. That this court has no jurisdiction of the case, the plaintiff, as well as the defendant, being a citizen of Louisiana. 2d. That the heirs of Samuel Brown are equally and jointly interested in the defence of this suit, and not being citizens of Louisiana, this court cannot exercise jurisdiction over them. 3d. The defendant denies that he ever contracted any obligation to convey to the plaintiff a lot on the batture. 4th. That the defendant had acquired a right to a lot on the batture, for professional services, as a lawyer, rendered to Edward Livingston and Peter De la Bigarre, in a suit of John Gravier vs. the Corporation of New Orleans, under whom the said Livingston and De la Bigarre claimed the batture by purchase; that it was the *right* which the defendant exchanged with the plaintiff, for *his right* to a tract of land at the English Turn, and that it was in the power of the plaintiff to have reduced this right to possession, which he neglected to do. 5th. That the demand against the defendant for the lot or its value, is prescribed by law. 6th. That the defendant can only be made liable for one-fourth of the value of said lot, and that such value must be estimated at the time of the contract in 1807, with interest thereon only from the time of the judicial demand, or commencement of this suit. As to the first plea, the plaintiff contended that it was *res judicata*, it having been determined by a jury, a few days before, that he was not a citizen of Louisiana; but that was a suit not between the same parties, the defendant being a different person from the one now before the court. A rule of this court made on the 20th March, 1830, declares that no denial of the allegation of citizenship made in a petition, nor any dilatory exception, or plea in abatement involving matters of fact, shall be allowed, unless verified by affidavit filed therewith by the counsel, agent, or party, as to their belief of the truth thereof. This rule was made to prevent these injurious delays to which a looser practice had given rise; and the defendant not having complied with this rule, and the jurisdiction appearing *prima facia* upon the record, the plea was overruled. The second plea to the jurisdiction was overruled upon the ground that the heirs of Samuel Brown were not made *parties* to the suit, and because the plaintiff was not bound to make them parties, he having the right to proceed against the obligors, jointly and severally, at his option. Although S. Brown was connected with the defendant in the purchase of the tract of land at the English Turn, he does not appear to have had any interest in the batture lot. That lot the defendant acknowledges was his own—given as the reward of his professional services. But were it otherwise, in a case of this kind each would be bound for the

whole. The Civil Code, art. 2,104, says, an obligation is divisible or indivisible, according as it has for its subject either a thing which in its *delivery*, or a fact which in its *execution*, is or is not susceptible of division. And again: "the obligation is indivisible if the light in which it is considered in the obligation does not admit of its being partially executed;" every one of these who have conjointly contracted an indivisible debt is liable for the whole. C. C. art. 2,109. A lot of ground in its nature cannot be delivered in parts; therefore, if it be competent for a party to sue one of many who have jointly bound themselves to deliver a lot, and if a specific performance cannot be made, will not the same principles compel that *one* to pay its equivalent in money? I shall now discuss the pleas to the merits of this case. The first of these denies that the defendant was ever bound to convey to the plaintiff a lot on the batture. The notarial act before recited, I think, is conclusive on this point. It shows that an exchange of a batture lot, by the party defendant, was made for a tract of land then owned by the plaintiff; and it is in evidence that the defendant acquired dominion over that tract of land, which he afterwards restored to the plaintiff. If, then, the defendant was not bound to convey to the plaintiff a title to the batture lot, he received the tract of land without any valuable consideration, which cannot be presumed to have been the meaning of the parties. But the plaintiff contends that Mr. Brown, the defendant, was not in possession of the lot; and, as Livingston and the trustees of De la Bigarre had stipulated to transfer it to Brown for his professional services, that they became his substitutes to convey the title to the plaintiff, and that he only sold what his counsel calls an incorporeal right to the plaintiff, and that, too, without warranty. It is true, a private agreement between these parties, dated about a week before the exchange of the lot for the tract of land took place between the plaintiff and defendant, stipulates that the trustees of De la Bigarre should convey to the defendant a lot on the batture; but this being a private instrument, its contents are not presumed to have been known to the plaintiff: he was no party to it; and it was never made public by registry until 27th August, 1818. If the trustees of De la Bigarre were bound to convey a lot to the defendant, and if he afterwards exchanged that lot with the plaintiff for a tract of land, it appears to me the legal course would have been to have compelled the trustees to make the conveyance to him, and then to have transferred the title to the plaintiff. The notarial act of the plaintiff and defendant speaks of a *lot* to be given in consideration of the tract of land, not of a *right to a lot*. The parties to this contract must be viewed as mutual vendors and vendees, and therefore the provision of the art. 2,449 of our C. Code applies to this case, which is, that the seller is bound to explain himself clearly respecting the extent of his obligation; any obscure or ambiguous clause is construed against him. If, therefore, the defendant only meant to convey an incorporeal *right* to the plaintiff, he ought to have expressed himself. The defendant having sold a lot to the plaintiff was bound to warrant the title; to it warranty results of right from a sale, C. C. 2,479; and again, C. C., art. 2,450, the seller is bound to two principal obligations—that of *delivering*, and that of *warranting* the thing which he sells. But it was said in argument that the defendant, having sold his right to the lot to the plaintiff, could not afterwards sue for, and recover the possession. The same argument would apply in a case where one sells to another property which does not belong to him. In both instances, he would be liable for the value of the thing sold, unless he had ex-

pressly stipulated that he sold only his right to the thing, and had "clearly explained," in the words of the law, "the extent of his obligation." Such stipulation and explanation are not to be found in the instrument on which this suit is brought; neither does it substitute any one in place of the defendant to transfer the property to the plaintiff. The collateral evidence adduced to show how the title to the defendant was derived through Gravier, Livingston, and De la Bigarre, has no relation to the plaintiff. He never agreed to accept any of them as the substitute of the defendant. The law of Louisiana, C. C., art. 2,188 and 2,190, is, that the delegation by which a debtor gives to the creditor another debtor, who obliges himself to ward such creditor, does not operate a novation, unless the creditor has expressly declared that he intends to discharge his debtor who has made the obligation. The mere indication made, as a debtor of a person who is to pay in his place, does not operate a novation. In this case the plaintiff did not expressly declare that he intended to discharge the defendant; and if the defendant indicated another as the person to fulfil his engagement, yet, without the express assent of the plaintiff, he is not bound by it. It is true the correspondence, carried on in Paris between these parties in 1824, shows that the plaintiff took from the defendant an order on Mr. Livingston to transfer the lot to him; but it also shows that the plaintiff, after so great a lapse of time, and so great a distance from N. Orleans, did not recollect the circumstances of the notarial act between him and the defendant, who then reminded him of it, and gave him to understand that Mr. Livingston, and not he, by that instrument, was bound to make him the transfer. On that supposition the plaintiff acted; but when he arrived in this city, and had access to the instrument to which he had been referred, he found no such stipulations had been made. This acceptance, therefore, of Mr. Livingston as the substitute of the defendant in this matter, made under the circumstances it was, ought neither in law or equity to be construed as a voluntary discharge of the original obligor. The plea of prescription not being insisted upon in argument, is presumed to have been waived, probably for the reason that the prescription interrupted in 1824 by the defendant's acknowledgment of the plaintiff's right to a lot on the batture; and although the defendant did not then admit that he was bound to make the transfer, but that Livingston was, yet I think that his admissions on the subject are sufficient to destroy the plea of prescription. Such being my views of the whole case, it now remains for me to act the part of a jury, and assess the damages due to the plaintiff in consequence of the defendant having failed to fulfil his contract. The plaintiff insists that, as the defendant cannot now give him the specific lot mentioned in the contract, he is bound to pay him the present value of a lot of equal dimensions situated on the batture; while the defendant contends that he cannot be bound beyond the value of the lot at the date of the contract, with interest. The plaintiff, on the trial, produced Daniel T. Walden, as a witness to ascertain the *the* value of such lots at the present time. The witness was of opinion that the best lot on the batture, of 60 by 120 feet, is worth from 40 to $45,000; and that the least valuable is worth $10,000. The medium value then would be from $25,000 to $27,000, which the plaintiff declared he was willing to accept. He also introduced Samuel P. Moore as a witness, who swore that he heard the defendant declare, shortly after his exchange with the plt., that he had sold the land at the English turn for $8,000. To rebut this evidence, the defendant produced a notarial act executed by the plaintiff on the 28th

September, 1807, by which it appears he took back, from the defendant and his brother, the tract of land at the English Turn, for which he gave them seven slaves. This last, I think, is better evidence of the real value of the land than the loose and perhaps vain declaration of the defendant, as stated by the witness Moore. I agree with the counsel for the defendant, that, according to "the course of the common law, the rule of compensation should be the consideration which was paid, with legal interest, and not the instance value of the lot, or in an opposite course, its depreciated value." The rule, however, in this State, seems to be different; that is to say: the general rule to which, I think, this case ought to form an exception, for the following reasons: If the lot ever had been, or could be, precisely designated, its value could be clearly ascertained; but whether the spot contemplated by the parties, at the time, is *terra firma*, or submerged by the change of the course of the river, cannot now be ascertained. Besides, it is a matter of history, that the batture property was the subject of a series of suits, after the first decision in the case of Gravier vs. the Corporation. The U. S. claimed it, and President Jefferson dispossessed Mr. Livingston, who afterwards regained possession of it. The heirs of Gravier, in France, recovered a portion of it. Then the joint proprietors obtained, by compromise, another portion of it; and lastly, certain pretensions of the city Corporation were bought off, so that great losses and expenses were incurred previous to the final settlement of the question, and, of course, the lot in dispute made part of the property in litigation. If, therefore, the plaintiff had reduced it to possession at the time of the contract, and, in order to save it, had participated in all the suits which were brought on the subject, it would have been of little value at their termination. By the terms of the contract, it is very questionable whether, after having put the plaintiff in possession of the lot, (if he had done so,) the defendant would have been bound to defend the title against the whole world; and if not, the expense of defending it would have fallen upon the plaintiff. Added to all this, he might have compelled the defendant to put him in possession immediately after the exchange was made. For all these reasons, I think he is not entitled to the suppositious value, at this time, of a piece of land which cannot be designated. Yet, as it was once susceptible of identification, and as he gave a valuable consideration for it, he is entitled to that amount, with interest upon it. And here, again, I am obliged to discharge the duty of a jury, and ascertain, as near as I can, what was the amount of that consideration. I adopt the value of the slaves given by the plaintiff to the defendant, for the plantation at the English Turn, as the criterion of the consideration. From their description, they appear to have been a family, consisting of a man and woman, and five children. From my own knowledge of the relative value of slaves in this country about the time of this transaction, I am of opinion that this family were not worth more than $2,000. To this sum I think the plaintiff is entitled, with damages, equal to interest thereon at the rate of 6 per centum per annum, from the date of the transfer of the slaves to the defendant.

It is therefore adjudged, ordered, and decreed, that the plt. recover from the defendant the sum of $2,000, with damages, equal to interest thereon at the rate of six per centum per annum, from the 28th day of September, 1807, until paid, and costs of suit.

Defendant's Petition for Writ of Error filed, 13th July, 1832.

To the honorable District Court of the United States for the Eastern District of Louisiana.

The petition of James Brown, respectfully shows, that he believes there is error in the judgment of this hon. court, in the suit wherein Richard Raynal Keene is plaintiff and your petitioner defendant, in this, that the plea to the jurisdiction should have been sustained; that the evidence offered by your petitioner, in support of the same, should have been received; that there should have been judgment for defendant on the merits; and that a new trial should have been granted, for the reasons filed, on the application for the same. Wherefore, your petitioner prays that a writ of error may be allowed to him in said case, on his giving bond, with B. Humphreys as his security, in such sum as your honors may think reasonable, to answer all damages and costs that the said Richard R. Keene may sustain by the suing out said writ, and that he may be cited, according to law, to be and appear in the Supreme Court of the United States to answer to said writ of error.

As in duty bound, &c.

ISAAC T. PRESTON,
Attorney for Petitioner.

Statement of Facts filed July, 1832.

RICHARD RAYNAL KEENE. *vs.* JAMES BROWN. } *District Court U. S for the Eastern District of Louisiana.*

The testimony of D. T. Walden proves that a lot, of the dimensions of 60 feet front and one hundred and twenty feet deep, in the New Orleans batture, commonly called Gravier's batture, at a *minimum* price is, or was, in the month of May, 1832, worth the sum of ten thousand dollars, whilst the maximum price of a lot of the same dimensions, in the same batture, at the period aforesaid, would amount to the sum of from 40 to 45,000 dollars; and in the years of 1825, 1827, the batture property had been bought at a much lower price, on account of certain contesting titles or claims; said reduced prices being from one to two thousand dollars. The testimony of S. B. Moore proves that the said James Brown declared in his presence, in the year 1807, that he, the said Brown, had derived a benefit amounting to the sum of $8,000 from the property which he received from the said Keene in exchange for a batture lot. It is admitted that the dimensions above stated, to wit, 60 feet front and 120 feet deep, constitute, according to the customary sense, one full or entire lot. It is also admitted that the said Keene ceased to reside in New Orleans in 1807, that he returned to New Orleans in the beginning of 1830, left it in July of the same year, and returned again in March, 1832. This statement, including the documents on file and answer given by said defendant in 1830, shall be considered as containing all the facts of the case.

RICHARD RAYNAL KEENE, *P. P.*
ISAAC T. PRESTON,
Atty. for the Defendant.